NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2022

DALLAS TERRELL SMITH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

Timothy Cone
Counsel for Petitioner Smith
1615 New Hampshire Avenue N.W.
4th floor (North)
Washington, D.C. 20009
Tel. (202) 862-4333

QUESTIONS PRESENTED

In the Eleventh Circuit, in a prosecution for making a false statement in connection with the acquisition of a firearm in violation of 18 U.S.C. § 922(a)(6), the question whether the false statement was "material" is for the judge to decide, not the jury, and, when the purchaser's false statement is about his address, the judge is bound by Circuit caselaw which holds that a falsehood about one's address is always material. These interpretations of § 922(a)(6) conflict with the law in other Circuits, where materiality is an issue for the jury, not the judge, and a falsehood about one's residence in not *per se* material.

This petition therefore presents the following questions:

(1) is the issue whether a false statement was material to a firearms transaction a question for the judge, or the jury?

(2) is a false statement about a buyer's residential address always material to the acquisition of a firearm, or does its materiality depend on the facts of the case?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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Dallas Terrell Smith respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case No. 23-10172 in that court on August 2, 2023, in *United States v. Dallas Terrell Smith*, which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

The unpublished opinion of the Court of Appeals (*infra* App. A001) is not yet in the Federal Appendix, but is available at 2023 WL 4929961.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND OTHER PROVISIONS INVOLVED

18 U.S.C. § 922(a)(6):

(a) It shall be unlawful . . .

> (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.

STATEMENT OF THE CASE

A four-count indictment charged Smith with three counts of making false statements in connection with the purchase of firearms from a licensed dealer, in violation of 18 U.S.C. § 922(a)(6) (Counts 1-3), and one count of dealing in firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A). A0001. The jury convicted Smith on Counts 1 and 4, and acquitted him on Counts 2 and 3 (*i.e.* on two of the three § 922(a)(6) counts). A0001. The district court sentenced Smith to one year and one day in prison, followed by three years of

supervised release. A0001. Smith appealed his Count 1 conviction to the United States Court of Appeals for the Eleventh Circuit. A0001. (Smith also sought reversal of his Count 4 conviction; the present certiorari petition does not challenge Smith's Count 4 conviction.)

In his challenge to his Count 1 conviction, Smith argued that (a) as he maintained in the district court (DE87:46-48, 57), the question whether his allegedly false statements were "material," within the meaning of the statute should have been submitted to the jury, (b) the residential address he wrote on the ATF Form 4473 when he acquired the two firearms, though false, was not "material" to the lawfulness of the sale, and (c) the government failed to prove that he was not the firearm's "actual buyer." A0001-0002 & n. 1.

The Eleventh Circuit affirmed Smith's Count 1 conviction. The Eleventh Circuit rejected Smith's argument that "the question of whether [Smith's] allegedly false statements were 'material' within the meaning of the statute should have been submitted to the jury." A0003-0004, n. 1. The Eleventh Circuit stated: "[A]s we have explained before, whether a statement of fact is '*material to the lawfulness* of the sale' of a firearm is 'purely a question of law' for the court to decide." A0003-0004, n. 1 (quoting *United States v. Klais*, 68 F.3d 1282, 1283 (11th Cir. 1983) (emphasis added in *Klais*)).

The Eleventh Circuit elected not to address Smith's argument that there was insufficient evidence to show he was not the actual buyer. A003.[1] Instead, the Eleventh

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[1] The Eleventh Circuit's election not to address this argument likely reflects its strength. The government claimed that Smith was a straw purchaser who bought one of the two Count 1 firearms on behalf of a person named Bogle. But the government presented no evidence that Smith had a pre-existing agreement to resell the firearm to Bogle, or that Smith, in fact, resold the firearm to Bogle. Br. 9-10. In the absence of such evidence, the government claimed that the jury could "infer" that Smith was not the true purchaser from

Circuit, noting that under 18 U.S.C. § 922(a)(6) "[o]ne false statement is enough," addressed, and rejected, Smith's argument that the incorrect address he gave was not material to the transaction (A0004-0005):

> Smith's argument that a false address is not "material to the lawfulness of the sale" of a firearm is contrary to binding precedent. In *United States v. Gudger*, our predecessor court explained that a buyer's intentional misstatement of his home address is material to the lawfulness of the sale because the dealer is required by statute to record the name, age, and place of residence of the buyer — meaning that "the sale is illegal unless these matters are correctly recorded." 472 F.2d 566, 568 (5th Cir. 1972) (quotation omitted); *see* 18 U.S.C. § 922(b)(5). We are bound by the holding in *Gudger* "unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc."
>
> Smith attempts to distinguish *Gudger* by pointing out that the defendant in that case listed a *fictitious* address, whereas the address he provided was an actual residence—albeit one where he did not live at the time and had not lived for several years. We see no difference. Either way, Smith's statement that the Fourth Avenue address was his "current" address was false, and he knew it. *Gudger* makes clear that providing a false address is "material to the lawfulness of the sale" under § 922(a)(6).

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the fact that Bogle was found in possession of the firearm hours after the sale. Gov't Br. 18. But, in the absence of any evidence of a pre-existing agreement between Smith and Bogle, or that Smith executed such an agreement by selling the firearm to Bogle, there was no evidence of a straw purchase arrangement – an essential element of the offense. *See United States v. Abramski*, 573 U.S. 169, 199-200 (2014) (Scalia, J., dissenting) (noting the government's concession at oral argument that "the man at the counter is the true purchaser even if he immediately sells the gun to someone else."). In effect, the government was inviting the Court of Appeals to speculate that a resale agreement existed between Smith and Bogle, and that Smith executed this agreement by selling the firearm to Bogle– even though, in the absence of any evidence to show the existence of such a straw purchase arrangement, a reasonable jury should have concluded (as it did with respect to Counts 2 and 3) that the government failed to prove its case.

REASONS FOR GRANTING THE WRIT

1. **Contrary to the law in the Eleventh Circuit, in prosecutions under 18 U.S.C. § 922(a)(6) for making a false statement to a firearms dealer in connection with the acquisition of a firearm (a) the question whether the false statement was material to the lawfulness of the firearm sale should be for the jury, not for the judge, and (b) a false statement about one's residential address is not "always material" to the lawfulness of the sale.**

   A. **Whether a false statement was material to the lawfulness of a firearm sale should be decided by the jury, not the judge.**

At his trial on three counts of violating 18 U.S.C. § 922(a)(6), Smith objected to proposed jury instruction that told the jury that the question whether the false statement was material to the lawfulness of the firearm sale was for the judge to decide (not the jury). DE87:46-48. The district court overruled this objection. *Id.* The jury ultimately convicted Smith of one count of violating § 922(a)(6) – and acquitted on two other counts of violating this statute.

On appeal to the Eleventh Circuit, Smith challenged the district court's ruling. The Eleventh Circuit summarily rejected his argument, stating (in a foonote): "[A]s we have explained before, whether a statement of fact is '*material to the lawfulness* of the sale' of a firearm is 'purely a question of law' for the court to decide. *United States v. Klais*, 68 F.3d 1282, 1283 (11th Cir. 1995) (emphasis in original)." A0003-0004 n. 1. Under Eleventh Circuit law, this ruling was correct. In *Klais*, the defendant argued that, consistent with this Court's decision in *United States v. Gaudin*, 515 U.S. 506 (1995), the issue whether a false statement is material for purposes of § 922(a)(6) is an element of an offense, and must

therefore be submitted to the jury. 68 F.3d at 1283. *Klais* rejected this argument. *Id.* The decision below attests that *Klais* is now well-settled Eleventh Circuit law. In fact, *Klais*' holding has been incorporated into the Eleventh Circuit's Pattern Jury Instructions with respect to the elements of the § 922(a)(6) offense:

> Whether the allegedly false [statement] [identification] is "material" is a question of law for the court to decide. If you find the [statement] [identification] in this case is false, then it was material to the sale.

Eleventh Circuit Pattern Jury Instructions, § 034.3 (rev. 3/2022).

The Sixth Circuit arguably agrees with *Klais*. *See United States v. Combs*, 2023 WL 2144150 at * 1-2 (E.D. Ky. Feb. 21, 2023) (citing *United States v. Stewart*, 1990 WL 47372 at * 2 (6th Cir. Apr. 16, 1990) for the proposition that "materiality . . . is a question for the Court to decide").

However, the law in the majority of Circuits conflicts with *Klais*. In these Circuits, in § 922(a)(6) prosecutions, the question whether a false statement was material is for the jury. *See United States v. Whitney*, 524 F.3d 134, 138 (1st Cir. 2008) (noting that the district court "instructed the jury that a fact is 'material' for purposes of § 922(a)(6) if it tends to influence the firearms dealer's willingness to sell a weapon, whether or not the dealer relies on the statement."); Third Circuit Pattern Jury Instructions § 6.18.922A-3 (explaining that the Third Circuit follows *Gaudin*, not the Eleventh Circuit's decision in *Klais*; setting out the jury instruction definition of "material" for purposes of § 922(a)(6); and giving examples of circumstances a jury "may consider" in determining whether a false statement is

"material")[2]; *United States v. Rahman*, 83 F.3d 89, 92 (4th Cir. 1996) (noting that the district court instructed the jury to determine whether "the subject of a false statement or identification was material to the lawfulness of the sale."); *United States v. Diaz*, 989 F.3d 390, 394 (5th Cir. 2021) (noting that district court's instruction tracked the Fifth Circuit Pattern Jury Instructions, which instruct the jury to determine whether "the alleged false statement was material to the lawfulness of the sale or disposition of the firearm") (quoting Pattern Jury Instructions: Fifth Circuit, Criminal Cases § 2.43B (2019))[3]; Committee on Federal Criminal Jury Instructions of the Seventh Circuit, *The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit* pp. 348-49 (jury should determine whether statement was "material to the lawfulness of the sale or other disposition"); *see id.* (cross-referencing the definition of "materiality" in the Pattern Instruction regarding 18 U.S.C. § 500 (a counterfeiting offense)); *United States v. Meech*, 2022 WL 136823, at * 1 (9th Cir. Jan. 14, 2022) (unpublished) (noting that the Ninth Circuit's Model Criminal Jury

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[2] This Petition discusses, *infra*, the Third Circuit's examples of circumstances that may make a false statement material to the lawfulness of a sale.

[3] Tellingly, the Fifth Circuit's Pattern Jury Instructions cited in *Diaz* updated its earlier version of the § 922(a)(6) materiality instruction, no doubt in light of this Court's intervening decision in *Gaudin*. The Fifth Circuit's pre-*Gaudin* Pattern Jury Instructions (like the current Eleventh Circuit Pattern Jury Instruction), stated:

> The "materiality" of the matter involved in the alleged false statement or identification is not a matter with which you are concerned, but rather is a question for the Court to decide. You are instructed that the alleged false statement or identification described in the indictment did relate to a material fact.

Fifth Circuit Pattern Jury Instructions (Criminal Cases) at 92 (West 1983) (quoted in *United States v. Ortiz-Loya*, 777 F.2d 973, 982 (5th Cir. 1985)).

Instructions instruct the jury to determine whether "the false statement was material"); *United States v. Kaspereit*, 994 F.3d 1202, 1209 (10th Cir. 2022) (noting that the district court instructed the jury to determine whether "the statement was intended to or was likely to deceive the dealer about a material fact").

As noted above, the Eleventh Circuit's decision in *Klais* stated:

> Section 922(a)(6) uses the word 'material' in an entirely different manner [than the statute at issue in *Gaudin*]. Section 922(a)(6) provides that it is unlawful 'knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive' a licensed gun dealer 'with respect to any fact *material to the lawfulness* of the sale . . . ."

68 F.3d at 1283 (emphasis added in *Klais*) (quoting 18 U.S.C. § 922(a)(6)). *Klais*' italicized the statutory phrase "material to the lawfulness of the sale." Thus, from the statute's reference to "the lawfulness of the sale," the Eleventh Circuit inferred that materiality presented "purely a question of law." *Id.* This question of law, it reasoned, was not for the jury, but for the judge to decide. *Id.*

Klais' reasoning is not without some initial intuitive appeal. If, under § 922(a)(6) materiality only relates to a "purely" legal question – namely, the "lawfulness" of a firearm transaction – one might reasonably expect materiality to be a question for a judge, rather than a jury, since it is judges, not juries, who decide legal issues.

But, on closer examination, *Klais*' reasoning is faulty, because materiality is not related just to the "lawfulness" of the sale – an arguably "purely" legal question. Materiality also involves a factual question: the actual effect of a false statement on a firearm dealer's decision to sell the firearm to the prospective purchaser. Materiality under § 922(a)(6) is

akin to materiality in other federal criminal statutes. *See* Committee on Federal Criminal Jury Instructions of the Seventh Circuit, *The William J. Bauer Pattern Criminal Jury Instructions of the Seventh Circuit* pp. 348-49 (cross-referencing, for purposes of defining materiality under § 922(a)(6), the definition of "materiality" in the Pattern Instruction regarding 18 U.S.C. § 500 – a federal counterfeiting offense). The materiality of a false statement depends not just on the "lawfulness" of a sale, but – ultimately – on its actual impact on the seller – *i.e.*. on whether it "*tends to influence* the firearms dealer's willingness to sell a weapon." *Whitney*, 524 F.3d at 138 (emphasis added). *Accord* Third Circuit Pattern Jury Instructions § 6.18.922A-3 (for purposes of § 922(a)(6), "[a] material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in connection with the sale of a firearm"); *Kaspereit*, 994 F.3d at 1209 (materiality jury instruction instructs the jury to determine whether "the statement was intended to or was likely to deceive the dealer about a material fact"). Thus, materiality relates in significant part to a question of fact: whether the false statement "tend[ed] to influence" the seller, *Whitney*. 524 F.3d at 138. This Court's analysis of § 922(a)(6) in *Abramski v. United States*, 573 U.S. 169 (2014) reflects this understanding.

Abramski considered whether a firearm purchaser's false representation that he was the actual buyer of a firearm constituted a "material" false statement when, in reality, he was buying on behalf of another person. The *Abramski* opinion analyzed how such a misrepresentation of one's identity was at odds with the goals, structure, and language of the overall "regulatory scheme." *Id.* at 181-63 (concluding that straw purchases undermine

the legal requirements of 18 U.S.C. §§ 922(t)(3), 922(c)(1), (2) & (3), and 922(b)(5)). But, ultimately, *Abramski*'s determination that a false statement about the identity of the purchaser is material to the purchase of firearms, and therefore violates § 922(a)(6), rested on the fact that, had the firearm dealership known that it was selling a firearm to someone other than the person who identified himself as the buyer, "the dealer . . . would have had to stop the transaction." 573 U.S. at 189 ("the sale could not have gone forward.").

Because materiality under § 922(a)(6) ultimately involves a determination of the actual effect of a falsehood on a firearms dealer, it presents a "mixed question of law and fact." *Gaudin*, 515 U.S. at 512. Under § 922(a)(6), as in *Gaudin*, "[d]eciding whether a statement is 'material' requires the determination of least two subsidiary questions of purely historical fact: (a) 'what statement was made?' and (b) 'what decision was the [decisionmaker] trying to make?'" *Id.* "The ultimate question: (c) 'whether the statement was material to the decision,' requires applying the legal standard of materiality to these historical facts." *Id.* Such "delicate assessments of the inferences a reasonable decisionmaker would draw from a given set of facts and the significance of those inferences to him is peculiarly one for the trier of fact." *Id* (brackets, ellipsis, and citation omitted). As in *Gaudin*, as in *Abramski*, and as here, the "delicate assessments of the inferences a reasonable decisionmaker would draw" present an issue for the jury.

The Eleventh Circuit's view is also at odds with the Third Circuit's detailed Pattern Jury Instructions with respect to materiality under § 922(a)(6), which provide:

> A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in connection

> with the sale of the firearm. In determining whether a fact was material to the lawfulness of the sale of the firearm, *you may consider* that
>
> [Include language that applies:
>
> (the law prohibits any person who has been convicted of a felony, that is, a crime punishable by a term of imprisonment exceeding one year, from possessing any firearm. (Name the felony of which the defendant was proven to have been convicted) is a crime punishable by imprisonment for a term exceeding one year.)
>
> (a firearm sale is unlawful unless the seller records, among other matters, the name, age, and residence of the buyer, inspects the buyer's photo identification, and submits the identifying information to a background check system to determine whether the buyer is prohibited from receiving a firearm. The fact that the buyer could lawfully obtain a firearm under (his)(her) true name and age does not make (his)(her) giving a false name and age immaterial. It is no defense with respect to this element that the buyer may have been eligible to acquire the firearm. A buyer who is eligible to lawfully acquire a firearm must nonetheless properly identify (himself)(herself) by name and age, among other matters.)]
>
> [If appropriate, add:
>
> Therefore, a person who acts as a "straw purchaser" on behalf of the actual buyer of a firearm makes a material misrepresentation to the seller, whether the actual purchaser is legally permitted to purchase the firearm or not.)]

Third Circuit Pattern Jury Instructions, 6.18.922A-3 *Firearm Offenses - Material Defined* (emphasis added). The Third Circuit's Pattern Jury Instructions set forth how a jury "may consider" whether a false statement is material, depending on the particular facts of a case. For example, a false statement regarding not being a convicted felon may be material. *See id.* A person who acts as a straw purchaser on behalf of the actual buyer makes a material

misrepresentation. *Id.* (The commentary accompanying this instruction indicates that the drafters considered this Court's decision in *Abramski*). In short, the Third Circuit's Pattern Jury Instructions incorporate the issue of materiality into § 922(a)(6) jury instructions.

Materiality, moreover, should be included in jury instructions because materiality is essential to a jury's determination whether a defendant possessed the requisite *mens rea*. As the Fourth Circuit observed, § 922(a)(6) contains two alternative *mens rea*:

> § 922(a)(6) permits the Government to carry its burden of proof with respect to the second [making a false statement] element in either of two ways. It may prove that a defendant's statement was intended to deceive the dealer or that the statement was likely to deceive the dealer. The 'intended to deceive' prong focuses on the subjective mental state of the defendant, so the defendant must have intended deception of the dealer in order for the Government to obtain a conviction under this prong. Under the 'likely to deceive' prong, on the other hand, the intent of the defendant to deceive the dealer is irrelevant; this clause focuses on the statement itself and whether it was likely to cause deception of the dealer.

Rahman, 83 F.3d at 93 n. * (emphasis added; citations omitted).

Materiality is relevant to establish both of the offense's alternative *mentes reae*. Either to prove that the defendant's subjective "intended deception" of the dealer bore not on something immaterial, but on a material aspect of the firearm transaction; or, alternatively, that a falsehood "was likely to cause deception of the dealer" – *i.e.*, materially influenced the dealer's decision to sell the firearm. Either way, proof that the false statement was "material" is essential to establish the *mens rea* underlying the offense. Again, the inquiry is not a "purely legal" question.

Further, the Eleventh Circuit's interpretation of § 922(a)(6) erects an irrebuttable presumption that *every* false statement, made knowingly, and with the intent to deceive (or likely to cause deception) is *material*. Yet, this is incorrect. Take a person who recently changed residences, but whose old address was still on his driver's license. This purchaser, when he wrote down his old address, might well have done so knowing this was false, with the intent to deceive the firearms dealer. But the out-of-date address would not necessarily be material to the transaction. Similarly, a homeless person who lived in motor vehicle, or, a person who lived in a recreational vehicle (RV), might knowingly give a non-existent residential address. Yet, again, this false address may not be material to the dealer's decision to sell the firearm.

The government, on appeal, pointed out that because Smith gave an address at which he did not live, "it took ATF longer to track Smith down"; this, the government argued, showed "the materiality of accurate current address information." Gov't Br. 10-11 (citing *Abramski*'s statement, 573 U.S. at 190, that § 922(a)(6) is "'designed to aid law enforcement in the investigation of crime.'"). Section 922(a)(6), however, does not refer to a fact material to law enforcement's "investigation of crime," but to "any fact material to the lawfulness of the sale or other disposition of such firearm." Because a person may move and change residence, the address on an ATF Form 4473 may well become out-of-date and misdirect investigators. This does not bear on its materiality under § 922(a)(6).

In sum, the Eleventh Circuit here, and in *Klais,* erred in concluding that the question of materiality under § 922(a)(6) should be submitted to the judge, not the jury.

B. A false statement about one's residential address is not "always material" to the lawfulness of the sale.

At the close of the evidence, the district court denied the defense motion for judgment of acquittal, rejecting the argument that Smith's incorrect address "was not a material issue" in the transaction. DE87:23-26. Then, as discussed above, the trial court gave the jury the following instruction regarding materiality:

> [W]hether the allegedly false statement is "material" is a question of law for the Court to decide. If you find the statement in this case is false, then it was material to the sale.

DE87:57. Objecting to this instruction, defense counsel argued that it incorrectly (a) led the jury to believe that "[n]o matter what the false statement is, it's material," and (b) "precluded [the defense] from being able to argue [lack of] materiality." DE87:48. The district court overruled this objection. DE87:49 ("I will prohibit you from arguing that the statements were not material.").

On appeal, Smith continued to maintain that the incorrect residential address he gave (it was five to seven years out-of-date), though "false," was not material to the transaction. Br. 4. Smith noted that 18 U.S.C. § 924(a)(1)(A) prohibits "knowingly mak[ing] any false statement . . . with respect to any information required by this chapter to be kept in the [licensed firearm dealer's] records." Br. 20-21 (citing *Abramski*, 573 U.S. at 192). Unlike § 922(a)(6), § 924(a)(1)(A) "does not require that the statement at issue be material." Br. 21 (citing *Abramski*, 573 U.S. at 192). Smith argued that a false statement that merely involves information, like the purchaser's address (which § 922(b)(5) requires a dealer to

keep), only justifies conviction under § 924(A)(1)(a), not under § 922(a)(6) – unless the circumstances indicate that the false address was material. Br. 21. *See Abramski*, 573 U.S. at 196 & n. 1 (Scalia, J., dissenting) (expressing "doubt" whether a falsehood that causes a dealer to neglect the § 922(b)(5) procedures "is *material to the lawfulness of the sale*," and noting that under such an interpretation of § 922(a)(6), Section 924(a)(1)(A) "would be superfluous.")(emphasis in original).[4]

Smith recognized that a binding precedent in the Eleventh Circuit, *United States v. Gudger*, 472 F.3d 566, 567 (5th Cir. 1982), affirmed a § 922(a)(6) conviction where the defendant "misrepresent[ed] identification with respect to the transaction, by presenting a *fictitious* address . . . to the dealer." Br. 23 (emphasis added). Smith argued that *Gudger* was distinguishable, because Smith did not create a fictitious address: the address he gave was on the State of Florida's DAVID records, and on his driver's license. Br. 23.

Smith further pointed out that the firearm dealer conducted a background check on Smith before he purchased firearms, based on his correct date of birth, and other correct identifying information he provided, including his concealed weapons permit and his driver's license. Br. 26-27. The incorrect address did not impede the background check – it was not material to the lawfulness of the sale. Br. 26.

In addition, Smith noted that the address he wrote down on the ATF Form 4473 was the out-of-date address that matched his driver's license, and pointed out that the seller of the Count 1 firearm, when asked, hypothetically, whether his dealership would go forward

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[4] The majority opinion in *Abramski* left this question open.

with a sale with an address that did not match the purchaser's photo identification, answered: "we need a government-issued-ID." Br. 28. Smith argued that he had not knowingly made a false statement material to the lawfulness of the sale, but, in effect, complied with the firearm dealer's instructions to provide an address that matched his government issued-ID. Br. 28. Smith also argued that even if the dealer *unwittingly* recorded incorrect "place of residence" information, the sale was lawful because a dealer can be prosecuted for the transaction only if he "knowingly" made a false statement required to be kept in his records. Br. 28 (citing 18 U.S.C. § 924(a)(3)).

The Eleventh Circuit summarily rejected all of these arguments, stating:

> Smith's argument that a false address is not "material to the lawfulness of the sale" of a firearm is contrary to binding precedent. In *United States v. Gudger*, our predecessor court explained that a buyer's intentional misstatement of his home address is material to the lawfulness of the sale because the dealer is required by statute to record the name, age, and place of residence of the buyer — meaning that "the sale is illegal unless these matters are correctly recorded." 472 F.2d 566, 568 (5th Cir. 1972) (quotation omitted); *see* 18 U.S.C. § 922(b)(5). We are bound by the holding in *Gudger* "unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting en banc."
>
> Smith attempts to distinguish *Gudger* by pointing out that the defendant in that case listed a fictitious address, whereas the address he provided was an actual residence — albeit one where he did not live at the time and had not lived for several years. We see no difference. Either way, Smith's statement that the Fourth Avenue address was his "current" address was false, and he knew it. Gudger makes clear that providing a false address is "material to the lawfulness of the sale" under § 922(a)(6).

A0004.

In effect, the panel adopted the position in *United States v. Garrity* that a false statement about a place of residence "is *always* material to the lawfulness of a firearm sale." 664 Fed. Appx. 889, 894 (11th Cir. 2016) (emphasis added) (unpublished). *See* Gov't Br. 11 (arguing that *Garrity* demonstrates that it is "'well-settled' in this Circuit [that] a firearm purchaser's identity, which includes his place of residence, is *always material* to the lawfulness of a firearm sale.'") (emphasis added). But this view that a residence is "always material" is incorrect. It conflicts with the law in other Circuits.

In *United States v. Bowling*, 770 F.3d 1168, 1177 (7th Cir. 2014), in its remand instructions accompanying its reversal of a § 922(a)(6) conviction, the Seventh Circuit noted that a prior Circuit precedent, *United States v. Queen*, 408 F.3d 337 (7th Cir. 2005), had held that a false address was "material" to the firearms transaction and sufficient to support the § 922(a)(6) conviction. *Id.* at 1177. For remand purposes, *Bowling* noted that while *Queen* "recognized that a false address was material in that case," *Queen* did not go "so far as to declare that providing a false address, in every case, is material as a matter of law." *Id.* at 1177-78. Thus, unlike in the Eleventh Circuit, it is not the law in the Seventh Circuit that a false address is always "material"; in the Seventh Circuit, providing a false address is *not* material "in every case."

The Eleventh Circuit's view is also at odds with the Third Circuit's detailed Pattern Jury Instructions – quoted in Section 1A, above – with respect to materiality under § 922(a)(6). The Third Circuit Pattern Jury Instructions address the "residence" question as follows:

> A material fact is one which would reasonably be expected to be of concern to a reasonable and prudent person in connection with the sale of the firearm. In determining whether a fact was material to the lawfulness of the sale of the firearm, you *may consider* that
>
> . . . a firearm sale is unlawful unless the seller records, among other matters, the name, age, and residence of the buyer, inspects the buyer's photo identification, and submits the identifying information to a background check system to determine whether the buyer is prohibited from receiving a firearm. The fact that the buyer could lawfully obtain a firearm under (his)(her) true name and age does not make (his)(her) giving a false name and age immaterial. It is no defense with respect to this element that the buyer may have been eligible to acquire the firearm. A buyer who is eligible to lawfully acquire a firearm must nonetheless properly identify (himself)(herself) *by name and age, among other matters.*)

Id. (emphasis added). This instruction states that the jury *may consider* that "a firearm sale is unlawful unless the seller records, among other matters, the name, age, and *residence* of the buyer." *Id.* (emphasis added). Thus, a false statement regarding the purchaser's residence is not always material – it is among the matters a jury "may consider." Tellingly, the final sentence of this instruction states that the buyer must "properly identify (himself) (herself) by name and age, among other matters" – leaving out an express reference to the buyer's address, and suggesting that unlike a name, or a date of birth, a place of residence may not be a material aspect of a person's identity.

Gudger pointed out that 18 U.S.C. § 922(b)(5) "makes the sale unlawful, without limitation, in every case, unless the seller records the 'name, age, and place of residence' of the purchaser." 472 F2. at 568. Based upon this reading of the text of § 922(b)(5), *Gudger* reasoned: "It follows from the fact that the sale is illegal unless these matters are

correctly recorded, that their misstatement is a misrepresentation of a 'fact material to the lawfulness of the sale.'" *Id.* (quoting § 922(a)(6)). But this reasoning is faulty. As noted above, in his *Abramski* dissent, Justice Scalia (joined by Justices Alito and Thomas, and the Chief Justice) expressed "doubt" about whether a falsehood that causes a dealer to neglect the procedures set forth in § 922(b)(5) is material to the lawfulness of the sale within the meaning of § 922(a)(6); the dissent noted that, under such a reading, 18 U.S.C. § 924(a)(1)(A) – which prohibits false statements with respect to all information required [by Section 922(b)(5)] to be recorded in a dealer's records – "would be superfluous." 573 U.S. at 196 n. 1 (Scalia, J. dissenting).

In its brief in the present case, the government pointed out that a representative from the firearm dealer from which Smith purchased the Count firearms testified that it would not have continued with the sale had it learned that a false address was listed on the ATF Form 4473. Gov't Br. 2-3 (citing DE86:81, 84). But this testimony – in a response to hypothetical questions[5] – supports Smith's argument. It demonstrates that a purchaser's false statement about his address is not "always" material – it depends on whether the government can present evidence of materiality through witnesses who testify regarding their reliance on a defendant's statements. The jury can then decide whether such testimony is sufficient to establish materiality – sometimes it may not be credible, or simply insufficient in light of the totality of the circumstances of the transaction.

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[5] As the government notes, the dealer representative testified as follows: "Q. Again, had that individual placed an address that was incorrect or false, would you have proceeded with the sale? A. No." Gov't Br. 3.

Here, had materiality been an issue for the jury – had Smith not been precluded from arguing lack of materiality in closing argument – there is a reasonable probability that the outcome would have been different – that, as with Counts 2 and 3, the jury would have acquitted him of violating § 922(a)(6). As discussed above, during the sale of the firearm, Smith gave his true identity: his correct name and his correct date of birth. Smith provided his driver's license and his concealed weapon permit. Based on this correct information, the dealer ran a background check and determined that Smith was eligible to purchase a firearm. *Compare Abramski*, 573 U.S. at 181 (rejecting a reading of § 922(a)(6) that would run an "identification and background check [on] the wrong person."). The dealer acknowledged that he required purchasers to provide government-issued ID to confirm their address – Smith complied, and the address he gave matched his government-issued ID. The address Smith gave was listed on the State of Florida's DAVID database. It was not a fictitious address – it was merely out-of-date. In these circumstances, a reasonable probability exists that the jury would have found that the out-of-date address was not material to the sale.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

By: /s/ Timothy Cone
Timothy Cone
Counsel for Petitioner Darrell Smith

Washington, D.C.
August 2023

APPENDIX

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-10172

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DALLAS TERRELL SMITH,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cr-20079-DPG-1

Before NEWSOM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Dallas Terrell Smith appeals his convictions and sentence of one year and one day in prison for providing a false statement in connection with the purchase of a firearm and dealing in firearms without a license. We affirm.

I.

A federal grand jury charged Smith with three counts of making false statements in connection with the purchase of firearms from a licensed dealer, in violation of 18 U.S.C. § 922(a)(6) (Counts 1–3), and one count of dealing in firearms without a license, in violation of 18 U.S.C. § 922(a)(1)(A) (Count 4). A jury found Smith guilty of Counts 1 and 4, and not guilty of Counts 2 and 3. The district court sentenced Smith to one year and one day in prison, followed by three years of supervised release. Smith now appeals his convictions and sentence, arguing that the evidence presented at trial was insufficient to support the jury's verdict as to Counts 1 and 4.

II.

We review de novo whether the evidence was sufficient to sustain a jury's guilty verdict, viewing all evidence and making all reasonable inferences and credibility determinations in favor of the government. *United States v. Isaacson*, 752 F.3d 1291, 1303–04 (11th Cir. 2014). We will not overturn a jury's verdict so long as any

reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt. *Id.*

III.

A.

To sustain a conviction under 18 U.S.C. § 922(a)(6), the government must prove beyond a reasonable doubt that in connection with the acquisition of firearms, the defendant knowingly made a false or fictitious oral or written statement intended to deceive or likely to deceive a licensed firearms dealer, and that the false statement was a fact material to the lawfulness of the sale or disposition of the firearm. 18 U.S.C. § 922(a)(6); *see United States v. Frazier*, 605 F.3d 1271, 1278–79 (11th Cir. 2010).

Count 1 of Smith's indictment charged that on June 2, 2019, Smith knowingly made two false statements on a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) form that he was required to complete for the purchase of two pistols from a licensed firearms dealer: that he was the actual buyer of the firearms, and that he resided at a specific address on Fourth Avenue in Miami, Florida. Smith argues that neither of these two statements could support his conviction on Count 1 because (1) the government failed to prove that he was not the actual buyer, and (2) the residence information he provided, though false, was not material to the lawfulness of the sale.[1]

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[1] Smith also argues that the question of whether his allegedly false statements were "material" within the meaning of the statute should have been submitted

We need not decide today what evidence was required to prove that Smith was not the "actual transferee/buyer" of the firearms as he stated on the ATF form, because Smith admits to knowingly listing an address where he had not lived for several years as his "current" residence on the same form. One false statement is enough, provided that the other elements of the offense are satisfied. *See* 18 U.S.C. § 922(a)(6).

And Smith's argument that a false address is not "material to the lawfulness of the sale" of a firearm is contrary to binding precedent. In *United States v. Gudger*, our predecessor court explained that a buyer's intentional misstatement of his home address is material to the lawfulness of the sale because the dealer is required by statute to record the name, age, and place of residence of the buyer—meaning that "the sale is illegal unless these matters are correctly recorded." 472 F.2d 566, 568 (5th Cir. 1972) (quotation omitted); *see* 18 U.S.C. § 922(b)(5). We are bound by the holding in *Gudger* "unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this court sitting *en banc*." *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008); *see also Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (adopting decisions of the former Fifth Circuit issued prior to October 1, 1981, as binding precedent).

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to the jury. But as we have explained before, whether a statement of fact is "*material to the lawfulness* of the sale" of a firearm is "purely a question of law" for the court to decide. *United States v. Klais*, 68 F.3d 1282, 1283 (11th Cir. 1995) (emphasis in original) (quoting 18 U.S.C. § 922(a)(6)).

Smith attempts to distinguish *Gudger* by pointing out that the defendant in that case listed a *fictitious* address, whereas the address he provided was an actual residence—albeit one where he did not live at the time and had not lived for several years. We see no difference. Either way, Smith's statement that the Fourth Avenue address was his "current" address was false, and he knew it. *Gudger* makes clear that providing a false address is "material to the lawfulness of the sale" under § 922(a)(6).

IV.

As to his conviction for dealing in firearms without a license, Smith argues that the government failed to present sufficient evidence that he was "engaged in the business of dealing in firearms" as that term is used in § 922(a)(1)(A). Smith argues that evidence that he sold only 24 firearms over a two-year period shows that he was not making a living from selling guns. But the statute does not require the government to prove that the defendant engaged in a high-volume firearm business or that he made any minimum dollar amount from his sales.

At the time Smith committed his offenses, Congress defined the term "engaged in the business" as used in § 922(a)(6) to mean "a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms," not including a hobbyist or collector who sells from his personal collection. 18 U.S.C. § 921(a)(21)(C) (2019). The term "with the principal objective of livelihood and profit" was

defined to mean that "the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection." *Id.* § 921(a)(22). So a person may engage in the business of dealing in firearms if he regularly buys and sells firearms with the principal intent of making a profit, even if that business is not his only (or even his main) source of income.

The evidence showed that Smith purchased at least 26 firearms between September 2018 and November 2020, including 11 Taurus G2C 9mm pistols. When he was interviewed in November 2020, he had only the two most recently purchased firearms—neither of which was a Taurus G2C 9mm—still in his possession. He spent about $10,000 on firearms during that period, though his only known source of income (other than firearm sales) was unemployment assistance. And most importantly, Smith admitted to ATF agents that he sold firearms "to pay his bills," and that he made about $50 profit on each firearm. This evidence was sufficient for a reasonable jury to find that Smith was engaged in buying and selling firearms "with the principal objective of livelihood and profit," though he was not a licensed firearms dealer. 18 U.S.C. § 921(a)(21)(C) (2019).

V.

We AFFIRM Smith's convictions and sentence.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **1:21-CR-20079-DPG**
DALLAS TERRELL SMITH	§	USM Number: **27641-509**
	§	
	§	Counsel for Defendant: **Barry Michael Wax**
	§	Counsel for United States: **Christine Hernandez**
	§	Court Reporter: **Glenda Powers**

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	**was found guilty on counts 1 and 4 of the Second Superseding Indictment after a plea of not guilty.**	

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18 U.S.C. § 922(a)(6) / Providing false and fictitious information to a Federal licensed firearms dealer in relation to the acquisition of firearms	**06/2/2019**	**1ss**
18 U.S.C. § 922(a)(1)(A) / Dealing in firearms without a license	**09/2020**	**4ss**

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

☒ **The defendant has been found not guilty on counts 2 and 3 of the Superseding Indictment.**

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

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

January 5, 2023
Date of Imposition of Judgment

Signature of Judge

DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

January 5, 2023
Date

DEFENDANT: DALLAS TERRELL SMITH
CASE NUMBER: 1:21-CR-20079-DPG(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **1 year and a day as to counts 1ss and 4ss, to run concurrent with one and other.**

☒ The court makes the following recommendations to the Bureau of Prisons:

The Defendant be designated to a facility in or as near to South Florida as possible.

The defendant shall be evaluated and participate in the 500 Hour Residential Drug and Alcohol Treatment Program (RDAP).

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

☒ **The defendant shall surrender to the designated facility and/or the United States Marshal for this District by 12:00 PM Noon on or before Monday March 6, 2023.**

☐ 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: DALLAS TERRELL SMITH
CASE NUMBER: 1:21-CR-20079-DPG(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on Supervised Release for a term of **Three (3) years to run concurrent.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

DEFENDANT: DALLAS TERRELL SMITH
CASE NUMBER: 1:21-CR-20079-DPG(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: DALLAS TERRELL SMITH
CASE NUMBER: 1:21-CR-20079-DPG(1)

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction: The defendant is prohibited from associating with Javaris Whitsett or visiting Federal Firearms Licensee while on probation/supervised release.

Relinquishment of Licensure: Upon request of the appropriate regulatory agency, the defendant shall relinquish his license to said agency. The defendant is on notice that such relinquishment is permanent and will be considered disciplinary action.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third-party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: DALLAS TERRELL SMITH
CASE NUMBER: 1:21-CR-20079-DPG(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$200.00	$.00	$.00		

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

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

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

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page 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 the ☐ fine ☐ restitution

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

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **$.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of $25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DALLAS TERRELL SMITH
CASE NUMBER: 1:21-CR-20079-DPG(1)

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payments of **$200.00** due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of $200.00 for Counts 1ss and 4ss, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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

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

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

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.