

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH MICHAEL EASTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Kevin Joel Page

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Appendix A Opinion of Fifth Circuit, CA No. 22-10375, *United States v. Easton*, 2023 WL 4401114 (5th Cir. July 7, 2023)(unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered December 7, 2022.
United States v. Easton, Dist. Court 2:22-CR-56-Z-BR.

Appendix C Factual Resume in *United States v. Easton*, Dist. Court 2:22-CR-56-Z-BR filed July 14, 2022.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-11188
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 7, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSEPH MICHAEL EASTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:22-CR-56-1

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

PER CURIAM:*

Joseph Michael Easton pleaded guilty to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). He appeals and, relying on *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), argues for the first time that § 922(g)(1) exceeds the scope of Congress's power under the Commerce Clause and is therefore unconstitutional. The

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

No. 22-11188

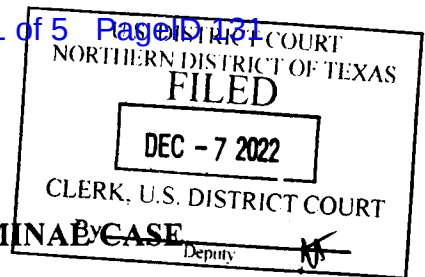
Government has filed an unopposed motion for summary affirmance and an alternative request for an extension of time to file its brief.

Easton correctly concedes that his arguments challenging the constitutionality of § 922(g)(1) are foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Daugherty*, 264 F.3d 513, 518 (5th Cir. 2001); *United States v. De Leon*, 170 F.3d 494, 499 (5th Cir. 1999). He raises the arguments to preserve them for further review.

Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), the Government's motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Amarillo Division



UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 2:22-CR-0056-Z-BR-(1)

U.S. Marshal's No.: 98496-509

JOSEPH MICHAEL EASTON

Joshua Jerome Frausto, Assistant U.S. Attorney

Felipe Zavala, Attorney for the Defendant

On July 29, 2022 the defendant, JOSEPH MICHAEL EASTON, entered a plea of guilty as to Count One of the Indictment filed on May 26, 2022. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

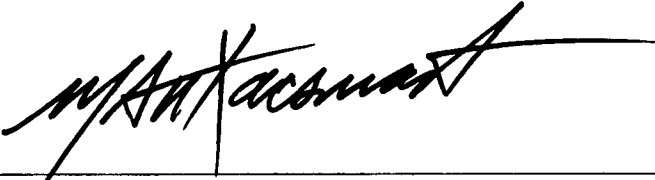
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	CONVICTED FELON IN POSSESSION OF A FIREARM	04/26/2022	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on May 26, 2022.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed December 6, 2022.



MATTHEW J. KACSMARK
UNITED STATES DISTRICT JUDGE

Signed December 7, 2022.

Judgment in a Criminal Case
Defendant: JOSEPH MICHAEL EASTON
Case Number: 2:22-CR-0056-Z-BR-(1)

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IMPRISONMENT

The defendant, JOSEPH MICHAEL EASTON, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Forty Eight (48) months as to Count One** of the Indictment filed on May 26, 2022. The sentence shall ***run consecutively*** to any sentence that may be imposed in Case # 70,658-D pending in the 320th Judicial District Court, Potter County, Texas for a parole revocation that is unrelated to the instant offense; and shall ***run consecutively*** to any sentence that may be imposed in Cases Nos. 27277C and 27401C pending in the 251st Judicial District Court, Randall County, Texas for parole revocations that are unrelated to the instant offense.

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

1. that the Defendant be allowed to participate in a full medical evaluation to address the kidney pain and food allergy issues; be allowed to participate in mental health evaluation to identify possible counseling to address the myriad mental health issues; and be allowed to participate in any and all substance abuse treatment and rehabilitation programs, including the Residential Drug Abuse Program, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to pursue his GED and enroll in college courses, if possible, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration at FMC Fort Worth or in the alternative, a facility nearest Amarillo, TX, if possible, if eligible, if consistent with security classification.

The Defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Indictment filed on May 26, 2022.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

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.

Judgment in a Criminal Case
Defendant: JOSEPH MICHAEL EASTON
Case Number: 2:22-CR-0056-Z-BR-(1)

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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.
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 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.
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 he or she observes 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 the job responsibilities), 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.
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.

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Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated December 6, 2022, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense (*see* 18 U.S.C. § 3583(d)).
2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).
3. The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. § 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (*see* 18 U.S.C. § 3583(d)).
4. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (*see* 18 U.S.C. § 3583(d)).
5. If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (*see* 18 U.S.C. § 3624(e)).
6. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.
7. If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (*see* 18 U.S.C. § 3583(d)).
8. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).
9. The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month.
10. The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

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11. The defendant shall participate in an outpatient domestic violence treatment program (*i.e.* batterer's intervention program and anger management program) as directed by the probation officer until successfully discharged. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), and subject to the provisions of 21 U.S.C. § 853(n), it is hereby ordered that Defendant's interest in the following property is condemned and forfeited to the United States: **A Hi-point, Model JHP, .45 caliber pistol bearing serial number X4317857— including any additional ammunition recovered with the firearm.**

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 Marshal

APPENDIX C

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

UNITED STATES OF AMERICA

v.

NO. 2:22-CR-056-Z

JOSEPH MICHAEL EASTON

FACTUAL RESUME

In support of Joseph Michael Easton's plea of guilty to the offense in Count One of the indictment, Easton, the defendant, Courtney Stamper, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

ELEMENTS OF THE OFFENSES

To prove the offense alleged in Count One of the indictment, charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2), that is, Convicted Felon in Possession of a Firearm, the government must prove each of the following elements beyond a reasonable doubt:¹

- First.* That the defendant knowingly possessed a firearm as charged in the indictment;
- Second.* That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;
- Third.* That the defendant knew he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year; and
- Fourth.* That the firearm possessed traveled in interstate or foreign commerce; that is, before the defendant possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019 ed.).

STIPULATED FACTS

1. Joseph Michael Easton, defendant, admits and agrees that on or about April 26, 2022, in the Amarillo Division of the Northern District of Texas, and elsewhere, he was a person who had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, and he did knowingly possess in or affecting interstate or foreign commerce, a firearm, that is, a Hi-Point, Model JHP, .45 caliber pistol, serial number X4317857, defendant knowing he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year, in violation of Title 18, United States Code Sections 922(g)(1) and 924(a)(2).

2. On April 26, 2022, Amarillo Police Department officers located Easton at the OYO hotel located in Amarillo, Texas. APD officers arrested Easton for an outstanding arrest warrant for a parole violation. APD officers located a Hi-Point, Model JHP, .45 caliber pistol, serial number X4317857 with 8 rounds of ammunition on Easton's person.

3. Law enforcement officers *Mirandized* and interviewed Easton. Easton admitted that he obtained the firearm on April 26, 2022. Before Easton possessed this firearm, he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense. The defendant further admits that, before he possessed this firearm, he knew that he had been convicted of a felony offense.

4. HSI Special Agent Dekreek determined that the firearm was not manufactured in the State of Texas. Accordingly, the firearm affected interstate or foreign commerce because the firearm must have traveled at some time from one state to another or between any part of the United States and any other country.


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

AGREED TO AND STIPULATED on this 8 day of July, 2022.


Joseph Michael Easton
Defendant

CHAD E. MEACHAM
UNITED STATES ATTORNEY


JOSHUA FRAUSTO
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