

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LAKEITH LYNN WASHINGTON ,

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/ Adam Nicholson

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Appendix A Opinion of Fifth Circuit, CA No. 22-10574, *United States v. Washington*, 2023 WL 5275013 (5th Cir. Aug. 16, 2021) (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered June 1, 2022.
United States v. Washington, Dist. Court 3:19-CR-184-K(1).

Appendix C Factual Resume

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-10574
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 16, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LAKEITH LYNN WASHINGTON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-184-1

Before JONES, HAYNES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

A superseding indictment charged Lakeith Lynn Washington with possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (“Count 1”), and possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) (“Count 2”). Washington pleaded guilty to both counts without a plea agreement. The

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

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Presentence Report (“PSR”) applied the Armed Career Criminal Act’s (“ACCA”) sentence enhancement to Count 1 due to Washington’s three prior state-law convictions for burglaries (committed months or years apart). As a result, the statutory minimum sentence was fifteen years of imprisonment. *See* 18 U.S.C. § 924(e). The district court adopted the PSR and sentenced Washington to fifteen years for Count 1 and a concurrent term of 30 months for Count 2. On appeal, Washington challenges the constitutionality of § 922(g)(1) and the application of the ACCA sentence enhancement. We address each argument in turn.¹

We begin with Washington’s contention that § 922(g)(1) violates the Commerce Clause and the Second Amendment. Because he failed to raise these constitutional arguments in the district court, we review for plain error. *See United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014). Accordingly, Washington must demonstrate that the district court’s application of this statute contained an (1) error, (2) that was clear or obvious, and (3) affected his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he does so, we have discretion to correct that error if it “seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (quotation and alteration omitted). Washington has failed to make this showing as to either of his constitutional challenges.

First, Washington urges that in enacting § 922(g)(1), Congress exceeded its authority under the Commerce Clause. However, he concedes—and we agree—that this argument is foreclosed by Fifth Circuit precedent. *See United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013). Second, Washington contends that while this court has previously rejected

¹ Washington does not contest the guilty plea or sentence as to Count 2, so we do not address it.

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Second Amendment challenges to § 922(g)(1), *see, e.g., United States v. Darrington*, 351 F.3d 632, 633–34 (5th Cir. 2003), an intervening Supreme Court decision draws this precedent into question, *see N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2125–30 (2022). To be sure, we recently relied on *Bruen* in invalidating a similar provision pertaining to persons subject to domestic violence restraining orders. *See United States v. Rahimi*, 61 F.4th 443, 452, 461 (5th Cir.), *cert. granted*, No. 22-915, 2023 WL 4278450 (June 30, 2023) (addressing 18 U.S.C. § 922(g)(8)). However, we have yet to address the constitutionality of § 922(g)(1)—and, in fact, *Rahimi* suggests that *Bruen*’s logic may not extend to this provision. *See id.* at 451–52 (noting that *Bruen* refers to “law-abiding” citizens in discussing the Second Amendment’s scope). Accordingly, given this lack of binding authority, we conclude that Washington did not establish plain error. *See United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir.), *cert. denied*, 143 S. Ct. 282 (2022).

Finally, Washington argues that the district court’s application of the ACCA mandatory minimum sentence violated his Fifth and Sixth Amendment rights. Per Washington, whether his three convictions occurred on “occasions different from one another,” *see* 18 U.S.C. § 924(e)(1), constituted a non-elemental fact that must have been alleged in the indictment or found by a jury. *See Wooden v. United States*, 142 S. Ct. 1063, 1070–71 (2022) (addressing whether ten burglaries on the same day in the same facility constituted “different occasions” under § 924(e)(1)). The Government agrees with this point in its brief, but it argues that any error was harmless. However, we need not address the harmless error argument, because we recently affirmed that *Wooden* does not invalidate our precedent authorizing the sentencing judge to conduct § 924(e)(1)’s “different

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occasions” inquiry. *See United States v. Valencia*, 66 F.4th 1032, 1032–33 (5th Cir. 2023) (per curiam). Accordingly, this argument also fails.²

AFFIRMED.

² Washington also concedes that this court’s precedent forecloses his argument that Texas burglary is not a violent felony for purposes of the ACCA enhancement. *See United States v. Herrold*, 941 F.3d 173, 175–77, 182 (5th Cir. 2019) (en banc). Thus, we do not address it.

APPENDIX B

United States District Court

Northern District of Texas Dallas Division

UNITED STATES OF AMERICA

v.

LAKEITH LYNN WASHINGTON

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:19-CR-00184-K(1)**§ USM Number: **58704-177**§ **Courtney Griffin Stamper**

§ Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	To the 2 Count Superseding Indictment, filed on September 11, 2019.
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 922(g)(1) and 924(a)(2) - Possession of a Firearm by a Convicted Felon	01/06/2019	1s
21 USC § 841(a)(1) and (b)(1)(C) - Possession with Intent to Distribute a Controlled Substance	01/06/2019	2s


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 count(s)
- ☒ The Original Indictment, filed on April 10, 2019, is 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.

June 1, 2022

Date of Imposition of Judgment



Signature of Judge

Ed Kinkeade, United States District Judge

Name and Title of Judge

June 1, 2022

Date

DEFENDANT: LAKEITH LYNN WASHINGTON
CASE NUMBER: 3:19-CR-00184-K(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:

ONE HUNDRED-EIGHTY (180) Months. This term consists of 180 Months Custody on Count 1s and 30 Months Custody on Count 2s with said terms to run concurrently for a Total Aggregate Term of 180 Months. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. F-1923669, F-1923670, and F-1923671, in the 194th Judicial District Court of Dallas County in Dallas, Texas, which are related to the instant offense.

Pursuant to United States Sentencing Commission, Guidelines Manual, § 5G1.3(d) p.s. (Nov. 2021), it is this Court's intent for the Defendant to receive a sentence adjustment to account for any time that the Defendant spent in state and federal custody beginning on January 6, 2019, that the Bureau of Prisons will not credit under 18 U.S.C. § 3585(b). To the extent that it applies, this Court cites to U.S.S.G. § 5G1.3(b) to support its intent for the Defendant to receive a sentence adjustment to account for any time that the Defendant spent in state and federal custody beginning on January 6, 2019, that the Bureau of Prisons will not credit under 18 U.S.C. § 3585(b). It is this Court's desire that this sentence be treated as being served concurrently, starting from January 6, 2019, with the sentence imposed in Case Nos. F-1923669, F-1923670, and F-1923671, in the 194th Judicial District Court of Dallas County in Dallas, Texas.

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

The Court recommends that the Defendant be allowed to serve his sentence at FCI Seagoville, Seagoville, Texas. Further, the Court recommends that the Defendant be allowed to Participate in the Residential Drug Abuse Program, if eligible. Finally, the Court recommends that the Defendant be allowed to take business classes while in custody of the BOP.

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

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

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

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

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LAKEITH LYNN WASHINGTON
CASE NUMBER: 3:19-CR-00184-K(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **THREE (3) Years. This term consists of 3 years Supervised Release on Counts 1s and 2s with said terms to run concurrently, for a Total Aggregate Term of 3 years**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that 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: LAKEITH LYNN WASHINGTON
CASE NUMBER: 3:19-CR-00184-K(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.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: LAKEITH LYNN WASHINGTON
CASE NUMBER: 3:19-CR-00184-K(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, 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, and contributing to the costs of services rendered (copayment) at the rate of at least \$ 10 per month.

The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. You shall contribute to the costs of services rendered (copayment) at a rate of at least \$10 per month.

DEFENDANT: LAKEITH LYNN WASHINGTON
CASE NUMBER: 3:19-CR-00184-K(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$.00	\$.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:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

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

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: LAKEITH LYNN WASHINGTON
CASE NUMBER: 3:19-CR-00184-K(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 \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1s and 2s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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 pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	3:19-CR-184-K
	§	
LAKEITH LYNN WASHINGTON,	§	ECF
Defendant.	§	

ELEMENTS AND PUNISHMENT OF THE OFFENSE AND FACTUAL RESUME

In support of the Defendant's plea of guilty to both Counts in the two-count Indictment charging a violation of 18 U.S.C. § 922(g)(1)¹; and a violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C), **LAKEITH LYNN WASHINGTON** ("Mr. Washington") and his attorney, Assistant Federal Public Defender, Courtney G. Stamper, stipulate and agree to the following:

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¹ Under the Indictment in this case, the penalty for this violation is found in 18 U.S.C 924(e) – the penalty provision of the Armed Career Criminal Act.

ELEMENTS OF THE OFFENSE

COUNT ONE

The elements of a violation of 18 U.S.C. § 922(g)(1) are as follows:

1. Mr. Washington knowingly possessed a firearm. The term “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion;
2. Before Mr. Washington possessed the firearm, a court of law convicted him of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense;
3. Mr. Washington knew that at the time he possessed the firearm that he had previously been convicted of a felony offense—he knew that he was a felon at the time he possessed the firearm; and
4. The possession of the firearm was in or affected interstate commerce; that is, at some time before Mr. Washington possessed the firearm, it had traveled from one State or Country to another.

COUNT TWO

The elements of a violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)), are as follows:

1. Mr. Washington knowingly possessed a controlled substance;
2. The substance was in fact methamphetamine, which is a Schedule II controlled substance; and
3. Mr. Washington possessed the methamphetamine with the intent to distribute it.

PUNISHMENT FOR THE OFFENSE

COUNT ONE²

Sentence: The maximum penalties a sentencing court can impose include the following:

1. imprisonment for a period of not less than fifteen years;
2. a fine not to exceed two-hundred-fifty-thousand dollars, or twice any pecuniary

² See Footnote 1.

gain to Mr. Washington or loss to the victim(s);

3. the sentencing court may impose a term of supervised release not to exceed three years; if Mr. Washington violates the conditions of supervised release, he could be imprisoned for up to a total of three years, but for no more than two years at one time;
4. a mandatory special assessment of one-hundred dollars;
5. restitution to victims or to the community;
6. forfeiture of property, including the firearm described in Count 1 of the Indictment; and
7. costs of incarceration and supervision.

COUNT TWO

Sentence: The maximum penalties the district court can impose include the following:

1. A term of imprisonment not to exceed twenty years;
2. a fine not to exceed \$1,000,000.00 or twice any pecuniary gain to Mr. Washington or loss to the victim(s);
3. Pursuant to 21 U.S.C. § 841(b)(1)(C), the sentencing court must impose a term of supervised release of at least three years; if Mr. Washington violates the conditions of supervised release, he could be imprisoned for up to two years and possibly face a further term of supervised release up to and including life;
4. A mandatory special assessment of one-hundred dollars;
5. Restitution to victims or to the community;
6. Costs of incarceration and supervision; and
7. Denial of federal benefits for up to five years after conviction.

Mr. Washington understands that the sentencing court **may** order that he serve the punishments for Counts One and Two consecutive to one another. The aforementioned also applies to the potential fine, the special assessment, and the terms of supervised release.

SENTENCING IN THIS CASE

Mr. Washington has discussed the Federal Sentencing Guidelines with his attorney and understands that the sentence in this case will be imposed by the district court after it has considered the applicable statutes, the Sentencing Guidelines, and the factors included in § 3553(a). However, neither the Guidelines nor § 3553(a) are binding and the district court, in its discretion, may sentence Mr. Washington to the statutory maximum penalties, if that “sentence [is] sufficient, but not greater than necessary, to comply with the purposes set for in . . . [§ 3553](a)(2)[.]” Mr. Washington understands that if the district court imposes a sentence greater than he expects, he will not be able to withdraw his plea of “guilty” based solely upon that higher sentence as long as the sentence is within the statutory maximum punishment. Congress has abolished parole so if the district court sentences Mr. Washington to a term of imprisonment, he understands that he will not be released on parole.

Mr. Washington further understands that the charged offenses are felonies and conviction for such a felonies will deprive him of important constitutional and civil rights, which include, *inter alia*, the right to vote, the right to hold public office, the right to sit on a jury, and the right to actually or constructively possess a firearm.

Mr. Washington is a citizen of this country; accordingly, this conviction will not impact his ability to stay in this country or to return to this country, if at some time he travels outside of this country. Mr. Washington understands that if he was not a citizen of this country, this conviction could result in both his removal and exclusion from this country.

CONSTITUTIONAL RIGHTS AND WAIVER OF THOSE RIGHTS

1. Mr. Washington understands that he has the following constitutional rights:

- a. the right to plead not guilty to the charged offense;
 - b. the right to have a speedy trial by a jury in this District;
 - c. the right to have his guilt proven beyond a reasonable doubt;
 - d. the right to confront and cross-examine witnesses and to call and subpoena witnesses and material in his defense; and
 - e. the right to not be compelled to incriminate himself.
2. The waiver of these rights.

Mr. Washington waives the aforementioned rights and pleads guilty to the offenses alleged in Count One and Count Two of the two-count Indictment charging him with violating § 922(g)(1); and 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Mr. Washington understands the nature and the elements of the offenses for which he is pleading guilty and agrees that the following stipulated facts are true and will be submitted as evidence.

STIPULATED FACTS³

COUNT ONE

Mr. Washington admits that on or about January 6, 2019, in the Dallas Division of the Northern District of Texas, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, he knowingly and unlawfully possessed in and affecting interstate and foreign commerce, a firearm, to wit: a Glock, Model 42, .380 caliber pistol, bearing serial number ABCP322.

³ Mr. Washington understands that the district court is not limited to considering only these stipulated facts, but may consider facts for which Mr. Washington did not stipulate. *Cf.* 18 U.S.C. §§ 3553(a); 3661; *Pepper v. United States*, 131 S. Ct. 1229, 1235-51 (2011).

COUNT TWO

Mr. Washington admits that on or about January 6, 2019, in the Dallas Division of the Northern District of Texas, he did knowingly, intentionally, and unlawfully possess with intent to distribute methamphetamine, which is a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

VOLUNTARINESS OF THE PLEA OF GUILTY

Mr. Washington has thoroughly reviewed his constitutional rights, the facts of his case, the elements of the offense of conviction, the statutory penalties, and the Sentencing Guidelines⁴ and § 3553(a) with his attorney. Mr. Washington has received satisfactory explanations regarding every aspect of this document and the alternatives to signing this document, and he is satisfied with his attorney's representation of him. Mr. Washington concedes that he is guilty of Count One and Two of the Indictment.

RIGHT TO APPEAL

Mr. Washington understands that he has retained all of his rights to appeal and that he has the ability and right to file a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. Knowing this, Mr. Washington understands that if he wants to appeal either his sentence or his conviction he will have to file a Notice of Appeal within 14 days of the date that the Judgment in his case is filed. **Mr. Washington agrees that within 14 days of the filing of the Judgment he will personally write to the United States Clerk for the Northern District of**

⁴ Though undersigned counsel and Mr. Washington have discussed how the applicable chapters of the Federal Sentencing Guidelines will apply to Mr. Washington, and undersigned counsel and Mr. Washington have discussed the potential guideline range in his case, Mr. Washington understands that the conversations were about potential punishments and not a guarantee of what the punishment will be. Mr. Washington understands that only the district judge in his case will make that decision and that the decision will only be made at the sentencing hearing after the district judge has heard all of the evidence and arguments in his case.

Texas at the Office of the United States District Clerk, Northern District of Texas, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242, and request that the Clerk file a Notice of Appeal.

Mr. Washington further understands and agrees that within 14 days of the date that the Judgment is filed he will contact the Office of the Federal Public Defender, Northern District of Texas, Dallas Division, and request that a Notice of Appeal be filed in his case. Mr. Washington understands that typically the appeal will not cost him any money, unless the district court orders that he pay some amount of money, and that, unless otherwise ordered, the Office of the Federal Public Defender will write and file the appeal on his behalf.

AGREE TO AND SIGNED this October 28, 2021.


LAKEITH LYNN WASHINGTON
Defendant



COURTNEY G. STAMPER
Assistant Federal Public Defender

Attorney for MR. WASHINGTON