

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

TODD ANDRE WHITFIELD,

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

United States Court of Appeals for the Fifth Circuit

No. 23-10389
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 14, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TODD ANDRE WHITFIELD,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-209-1

Before JONES, SMITH, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Defendant-Appellant Todd Andre Whitfield pleaded guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2). The district court sentenced Whitfield to 100 months in prison—a four-month variance above the guidelines range—to be followed

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

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by three years of supervised release. Whitfield timely appealed, challenging his conviction and sentence.

Whitfield first challenges his conviction, arguing § 922(g)(1) is unconstitutional under both the Commerce Clause and the Second Amendment. As Whitfield concedes, because he did not raise these claims below, we review for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). To succeed on plain error, Whitfield has the burden of showing four requirements are met: (1) “there must be an error or defect . . . that has not been intentionally relinquished or abandoned”; (2) “the legal error must be clear or obvious, rather than subject to reasonable dispute”; (3) “the error must have affected the appellant’s substantial rights”; and (4) “if the above three prongs are satisfied, the court of appeals has the *discretion* to remedy the error—discretion which ought to be exercised only if the error ‘seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.’” *Id.* (second alteration in original) (citing and quoting *United States v. Olano*, 507 U.S. 725, 731–34, 736 (1993)).

Whitfield first argues that Congress’s ability to legislate under the Commerce Clause requires more than merely that the firearm previously traveled at some time in interstate commerce—which is all his factual basis provides regarding interstate commerce—but as Whitfield concedes, this argument is foreclosed. *See, e.g., United States v. Rawls*, 85 F.3d 240, 242 (5th Cir. 1996); *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Whitfield next argues § 922(g)(1) violates the Second Amendment after the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). In *Bruen*, the Supreme Court held that “the Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home,” and concluded that New York’s public-carry licensing regime was unconstitutional because New York issued

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licenses “only when an applicant demonstrate[d] a special need for self-defense.” *Id.* at 2122. The Court set forth a new test for assessing the constitutionality of a statute under the Second Amendment. *See id.* at 2125–26, 2129–30. “When the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2129–30.

We have not yet addressed the impact of *Bruen* on § 922(g)(1), and the two circuits to have done so have reached different results. *Compare Compare Range v. Att’y Gen.*, 69 F.4th 96, 98, 103–04 (3d. Cir. 2023) (en banc), *with United States v. Jackson*, 69 F.4th 495, 501–02 (8th Cir. 2023), *and United States v. Cunningham*, 70 F.4th 502, 506 (8th Cir. 2023). An error is not clear or obvious if “this circuit’s law remains unsettled and the other federal circuits have reached divergent conclusions.” *United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007). A “lack of binding authority is often dispositive in the plain error context.” *United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir. 2022) (quoting *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015)). “Even where the argument requires only extending authoritative precedent, the failure of the district court [to do so] cannot be plain error.” *Wallace v. Mississippi*, 43 F.4th 482, 500 (5th Cir. 2022) (quoting *United States v. Evans*, 587 F.3d 667, 671 (5th Cir. 2009)). Because there is no binding precedent holding that § 922(g)(1) is unconstitutional and because it is not clear that *Bruen* dictates such a result, Whitfield is unable to demonstrate an error that is clear or obvious. *See, e.g., United States v. EtchisonBrown*, No. 22-10892, 2023 WL 7381451, at *2–3 (5th Cir. Nov. 7, 2023) (unpublished); *United States v. Racliff*, No. 22-10409, 2023 WL 5972049, at *1 (5th Cir. Sept. 14, 2023) (unpublished); *United States v. Smith*, No. 22-10795, 2023 WL 5814936, at *1 (5th Cir. Sept. 8, 2023)

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(unpublished); *United States v. Hickcox*, No. 22-50365, 2023 WL 3075054, at *1 (5th Cir. Apr. 25, 2023) (unpublished).

Finally, Whitfield challenges the substantive reasonableness of his sentence, which he argues failed to give appropriate weight to his mental health conditions. Because Whitfield argued for a lesser sentence in the district court, he preserved this issue for appeal, and we review the substantive reasonableness of his sentence for an abuse of discretion. *See Holguin-Hernandez v. United States*, 140 S. Ct. 762, 766–67 (2020); *United States v. Diehl*, 775 F.3d 714, 723 (5th Cir. 2015). A non-Guidelines sentence unreasonably fails to reflect the statutory sentencing factors set forth in 18 U.S.C. § 3553(a) when it “(1) does not account for a factor that should have received significant weight, (2) gives significant weight to an irrelevant or improper factor, or (3) represents a clear error of judgment in balancing the sentencing factors.” *Diehl*, 775 F.3d at 724 (quoting *United States v. Smith*, 440 F.3d 704, 708 (5th Cir. 2006)). “The farther a sentence varies from the applicable Guidelines sentence, the more compelling the justification based on factors in section 3553(a) must be.” *Id.* (quoting *Smith*, 440 F.3d at 707). Our “review for substantive reasonableness is ‘highly deferential,’ because the sentencing court is in a better position to find facts and judge their import under the § 3553(a) factors with respect to a particular defendant.” *Diehl*, 775 F.3d at 724 (quoting *United States v. Hernandez*, 633 F.3d 370, 375 (5th Cir. 2011)).

At sentencing, the district court heard from counsel about Whitfield’s mental health, and the court noted Whitfield’s “background” may have played a part in his criminal activity. But, ultimately, the district court noted Whitfield’s lengthy criminal history, including several violent offenses, and concluded the need to deter unlawful conduct and promote respect for the law warranted a small upward variance. The record reflects the district court appropriately considered and balanced the § 3553(a) factors, and considering

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the deference owed to the district court, we cannot say such a small upward variance was substantively unreasonable in light of the district court's findings. *See Smith*, 440 F.3d at 709–10.

The judgement of the district court is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

TODD ANDRE WHITFIELD

Case Number: 3:21-CR-00209-B(1)

USM Number: 47470-509

Juan Gabriel Rodriguez

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	Count 1 of the one-count Indictment filed May 12, 2022
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<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 U.S.C. §§ 922(g)(1) & 924(a)(2) ¹ Possession of a Firearm by a Convicted Felon	02/05/2021	1

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)
 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.

April 6, 2023

Date of Imposition of Judgment

Signature of Judge

JANE J BOYLE, UNITED STATES DISTRICT JUDGE

Name and Title of Judge

April 10, 2023

Date

¹ As written at the time of the offense.

DEFENDANT: TODD ANDRE WHITFIELD
CASE NUMBER: 3:21-CR-00209-B(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:
100 months as to count 1.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be allowed to serve his sentence at FCI Seagoville, if eligible. Further, the Court recommends that the defendant be allowed to participate in the Residential Drug Abuse Treatment Program (RDAP) while in custody of the Bureau of Prisons, if eligible.

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: TODD ANDRE WHITFIELD
CASE NUMBER: 3:21-CR-00209-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **three (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: TODD ANDRE WHITFIELD
CASE NUMBER: 3:21-CR-00209-B(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: TODD ANDRE WHITFIELD
CASE NUMBER: 3:21-CR-00209-B(1)

SPECIAL CONDITIONS OF SUPERVISION

You 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 \$25 per month.

You 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 \$15 per month.

DEFENDANT: TODD ANDRE WHITFIELD
CASE NUMBER: 3:21-CR-00209-B(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	\$100.00	\$.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:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

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

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

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

DEFENDANT: TODD ANDRE WHITFIELD
CASE NUMBER: 3:21-CR-00209-B(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 (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 \$100.00 for Count 1, 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. § 3:21-CR-209-B
§
TODD ANDRE WHITFIELD, §
Defendant. § ECF

ELEMENTS AND PUNISHMENT OF THE OFFENSE AND FACTUAL RESUME¹

In support of the Defendant’s plea of guilty to Count One of the one-count Indictment² charging a violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2), **TODD ANDRE WHITFIELD** and his attorney, Assistant Federal Public Defender Juan G. Rodriguez, stipulate and agree to the following:

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

¹ To date, the government has not been willing to allow Mr. Whitfield to plead to any other charge than the charge that is within the Indictment. Moreover, the government has not been willing to allow Mr. Whitfield to plead to a “set sentence” or a “cap” to the sentence range pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

² There is one substantive Count and one forfeiture notice. Mr. Whitfield agrees to forfeit, to the government, his interests in the property noted in the Indictment. Mr. Whitfield also does not oppose the Government’s future filing/submission of a Motion and a Proposed Order to this District Court seeking the forfeiture of the aforementioned property. Mr. Whitfield further agrees that the Government may cite to this footnote to support its Certificate of Conference in the aforementioned future Forfeiture Motion.

ELEMENTS OF THE OFFENSE

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

1. Mr. Whitfield knowingly possessed³ 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. Whitfield 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. Whitfield 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;⁴ and
4. The possession of the firearm was in or affected interstate commerce; that is, at some time before Mr. Whitfield possessed the firearm, it had traveled from one State or Country to another.

3 “Possession of a firearm may be actual or constructive, and it may be proved by circumstantial evidence.” United States v. Meza, 701 F.3d 411, 491 (5th Cir. 2012) (citing United States v. De Leon, 170 F.3d 494, 496 (5th Cir. 1999)). “‘Constructive possession’ may be found if the defendant had (1) ownership, dominion[,], or control over the item itself or (2) dominion or control of the premises in which the item is found.” Id. (citing De Leon, 170 F.3d at 496) (remaining citation omitted); see also United States v. Williams, No. 17-20397, 2018 WL 1940409, *2-3 (5th Cir. April, 23, 2018) (unpublished); United States v. Hagman, 740 F.3d 1044, 1048-50 (5th Cir. 2014); United States v. Hinojosa, 349 F.3d 200, 203-04 (5th Cir. 2003); Pattern Jury Instructions, Fifth Circuit 1.31 (2015).

4 On June 21, 2019, the Court held “that in a prosecution under 18 U.S.C. § 922(g)[(5)] and § 924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he *knew* he belonged to the relevant category of persons barred from possessing a firearm.” Rehaif v. United States, 139 S. Ct. 2191, 2200 (U.S. 2019) (emphasis added). Though this broad language appears to include a “knowledge of status” requirement for all nine of the categories under § 922(g), the Court concluded with the following statement: “We express no view, however, about what precisely the Government must prove to establish a defendant’s knowledge of status in respect to other § 922(g) provisions not at issue here.” Id. (citation omitted). Here, we have a violation of § 922(g)(1). See id. at 2200 (Appendix, citing § 922(g)(1)). Though Rehaif specifically stated that it was not expressing any view of whether the Government must prove beyond a reasonable doubt that a defendant knows he or she is or was a felon, in an abundance of caution, Mr. Whitfield includes this additional element in this Factual Resume.

If it is later determined that Rehaif applies to 18 U.S.C. § 922(g)(1), Mr. Whitfield waives his right to have that additional element charged in the Indictment.

PUNISHMENT FOR THE OFFENSE

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

1. imprisonment for a period not to exceed ten years;
2. a fine not to exceed two-hundred-fifty-thousand dollars, or twice any pecuniary gain to Mr. Whitfield or loss to the victim(s);
3. the sentencing court may impose a term of supervised release not to exceed three years; if Mr. Whitfield 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; and
6. costs of incarceration and supervision.

SENTENCING IN THIS CASE

Mr. Whitfield 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. Whitfield 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. Whitfield 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. Whitfield to a term of imprisonment, he understands that he will not be released on parole.

Mr. Whitfield further understands that the offense of “Felon-in-Possession-of-a-Firearm” is a felony and conviction for such a felony 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. Whitfield 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. Whitfield 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. Whitfield 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. Whitfield waives the aforementioned rights and pleads guilty to the offense alleged in Count One of the one-count Indictment charging him with violating § 922(g)(1). Mr. Whitfield understands the nature and the elements of the offense for which he is pleading guilty and agrees that the following stipulated facts are true and will be submitted as evidence.

STIPULATED FACTS

Mr. Whitfield admits that on or about February 5, 2021, in the Dallas Division of the Northern District of Texas, after having been previously convicted of a crime punishable by imprisonment for a term exceeding one year — Mr. Whitfield knew that he was a felon well before the date that he possessed the firearm — he knowingly and unlawfully possessed a firearm and that the firearm that he possessed had previously been shipped and transported in interstate and foreign commerce.

Specifically, Mr. Whitfield admits and agrees that (1) he knowingly possessed a Smith and Wesson, model SD9VE, 9 millimeter caliber pistol, bearing serial number FCK1882; (2) the aforementioned Smith and Wesson, model SD9VE, 9 millimeter caliber pistol qualifies as a “firearm;” (3) before he possessed the aforementioned firearm he had previously been convicted of a felony; (4) he knew he qualified as a “felon” and was a felon at the time he possessed the aforementioned pistol; and (5) the aforementioned firearm was manufactured outside of the State of Texas and it traveled to Texas. This conduct violates 18 U.S.C. § 922(g)(1).

VOLUNTARINESS OF THE PLEA OF GUILTY

Mr. Whitfield has thoroughly reviewed his constitutional rights, the facts of his case, the elements of the offense of conviction, the statutory penalties, and the Sentencing Guidelines⁶ and

⁵ Mr. Whitfield understands that the district court is not limited to considering only these stipulated facts, but may consider facts for which Mr. Whitfield did not stipulate. *Cf.* 18 U.S.C. §§ 3553(a); 3661; *Pepper v. United States*, 131 S. Ct. 1229, 1235-51 (2011).

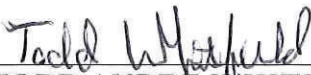
⁶ Though undersigned counsel and Mr. Whitfield have discussed how the applicable chapters of the Federal Sentencing Guidelines will apply to Mr. Whitfield, and undersigned counsel and Mr. Whitfield have discussed the potential guideline range in his case, Mr. Whitfield understands that the conversations were about potential punishments and not a guarantee of what the punishment will be. Mr. Whitfield 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.

§ 3553(a) with his attorney. Mr. Whitfield 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. Whitfield concedes that he is guilty of Count One of the one-count Indictment, and he concludes that it is in his best interests to plead guilty.


RIGHT TO APPEAL

Mr. Whitfield 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. Whitfield 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. Whitfield 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 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. Whitfield 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. Whitfield 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 ^{April} ~~September~~ 29, 2022.



TODD ANDRE WHITFIELD
Defendant



JUAN G. RODRIGUEZ
Assistant Federal Public Defender
Attorney for Mr. Todd Andre Whitfield