

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LUIS EDUARDO BAEZ,

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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INDEX TO APPENDICES

- Appendix A Opinion of Fifth Circuit, CA No. 23-10489, *United States v. Baez*, 2024 WL 637469 (5th Cir. Feb. 15, 2024) (unpublished).
- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered May 5, 2023.
United States v. Baez, Dist. Court 4:22-CR-368-O.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 23-10489
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

February 15, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS EDUARDO BAEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:22-CR-368-1

Before ELROD, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:*

Luis Eduardo Baez pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). He argues for the first time on appeal that the district court erred in accepting his guilty plea because § 922(g)(1) is unconstitutional under the Commerce Clause and the Second Amendment. The Government urges that the appeal waiver in Baez's plea

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

No. 23-10489

agreement bars consideration of his claims. However, as the appeal waiver does not implicate our jurisdiction, and Baez's substantive issues are easily resolved, we pretermitt the waiver issue. *See United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022); *United States v. Story*, 439 F.3d 226, 230–31 (5th Cir. 2006).

Because Baez did not raise his arguments before the district court, we review them for plain error. *See Puckett v. United States*, 556 U.S. 129, 134–35 (2009). To show plain error, Baez must identify (1) a forfeited error (2) that is clear or obvious, rather than subject to reasonable dispute, and (3) that affects his substantial rights. *Id.* at 135. If he satisfies the first three requirements, we may remedy the error if it “seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.” *Id.* (alteration in original) (quoting *United States v. Olano*, 507 U.S. 725, 736 (1993)).

Baez first argues that the factual basis for his plea failed to establish the requisite nexus to interstate commerce, as the statute requires more than the mere movement of a firearm in interstate commerce. He further argues that § 922(g)(1) unconstitutionally exceeds Congress's enumerated powers under the Commerce Clause. Baez correctly acknowledges that these arguments are foreclosed. *See, e.g., United States v. Jones*, 88 F.4th 571, 573 (5th Cir. 2023); *United States v. Darrington*, 351 F.3d 632, 633–34 (5th Cir. 2003). Baez's Second Amendment argument is grounded in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), which announced a new test for assessing whether a statute infringes the Second Amendment. 597 U.S. at 17. We have recently rejected the argument, considered under the plain error standard, that § 922(g)(1) infringes the Second Amendment under *Bruen*. *See, e.g., Jones*, 88 F.4th at 573–74. Baez's *Bruen* contention is therefore unavailing.

No. 23-10489

Finally, Baez contends that his guilty plea was not knowing and voluntary and that his due process rights were violated when the district court failed to advise him that § 922(g)(1) was unconstitutional. Federal Rule of Criminal Procedure 11(b)(1)(G) “requires that defendants understand the nature of the charge against them, which ‘refers to the elements of the offense.’” *United States v. Jones*, 969 F.3d 192, 198 (5th Cir. 2020) (quoting *United States v. Reyes*, 300 F.3d 555, 559 (5th Cir. 2002)). “To satisfy this requirement, ‘the court must have a colloquy with the defendant that would lead a reasonable person to believe that the defendant understood the nature of the charge.’” *Id.* (quoting *Reyes*, 300 F.3d at 559). Despite his assertions to the contrary, the district court was under no obligation to inform Baez that § 922(g)(1) is unconstitutional because, as discussed above, there is no precedent explicitly so holding. Moreover, the record reflects that the district court complied with its obligation to ensure that Baez understood the nature of the charge against him.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.
LUIS EDUARDO BAEZ

Case Number: 4:22-CR-00368-O(01)
U.S. Marshal's No.: 36668-510
Brandie Wade, Assistant U.S. Attorney
Joshua Rhodes, Attorney for the Defendant

On January 11, 2023 the defendant, LUIS EDUARDO BAEZ, entered a plea of guilty as to Count One of the Indictment filed on December 14, 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)	Possession of a Firearm by a Convicted Felon	05/03/2023	One

The defendant is sentenced as provided in pages 2 through 4 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 December 14, 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 May 5, 2023.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed May 5, 2023.

Judgment in a Criminal Case
Defendant: LUIS EDUARDO BAEZ
Case Number: 4:22-CR-00368-O(1)

Page 2 of 4

IMPRISONMENT

The defendant, LUIS EDUARDO BAEZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **EIGHTY-FOUR (84) MONTHS** as to Count One of the Indictment filed on December 14, 2022. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. 1736551D, 1736552D, 1736553D, 1736554D, 1736555D, 1736556D, 1736558D and 1711096D in the 371st Judicial District Court, Tarrant County, Texas, as well as Case Nos. 1717353, 1724410, 1736559, and 1748740 in the Tarrant County Criminal Court No. 8.

The Court recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, if eligible. The Court makes a non-binding recommendation to the BOP that Defendant, if appropriately classified, be allowed to serve his term of imprisonment as near as geographically possible to an FCI facility in Fort Worth, Texas.

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 December 14, 2022.

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

Judgment in a Criminal Case
Defendant: LUIS EDUARDO BAEZ
Case Number: 4:22-CR-00368-O(1)

Page 3 of 4

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.

In addition the defendant shall:

not commit another federal, state, or local crime;

not illegally possess controlled substances;

cooperate in the collection of DNA as directed by the probation officer;

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

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;

pay the assessment imposed in accordance with 18 U.S.C. § 3013;

take notice that if this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment;

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; and,

Judgment in a Criminal Case
Defendant: LUIS EDUARDO BAEZ
Case Number: 4:22-CR-00368-O(1)

Page 4 of 4

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.

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), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: Romarm Mini Draco, 7.62-millimeter pistol, bearing Serial No. PF 0072-2019 RO, and all ammunition found 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