

IN THE  
**Supreme Court of the United States**

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LEROY HAROLD WHITE, JR.,

*Petitioner;*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

1. DO THE FIFTH AND SIXTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AFFORD CRIMINAL DEFENDANTS AT LEAST THE SAME BURDEN OF PROOF FOR EXTRANEous OFFENSES PROVEN AS CONVICTED ALIENS RECEIVE FOR THEIR EXTRANEous OFFENSE AT DEPORTATION HEARINGS?

## **RELATED CASES**

*USA v. Johnson et al*, No. 4:22-cr-00276-O-2, U.S. District Court for the Northern District of Texas. Judgment entered February 24, 2023.

*USA v. White*, No. 23-10194, U.S. Court of Appeals for the Fifth Circuit. Judgment entered December 5, 2024.

**TABLE OF CONTENTS**

	<b>PAGE</b>
QUESTION PRESENTED .....	i
RELATED CASES .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF APPENDICES .....	iv
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW .....	1
JURISDICTION .....	2
STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE .....	3
A.    Course of Proceedings and Disposition Below .....	3
B.    Statement of Facts .....	4
REASONS FOR GRANTING THE WRIT .....	6
CONCLUSION AND PRAYER .....	12

**TABLE OF APPENDICES**

	<b>Page</b>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 5, 2024 .....	1a
APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 5, 2024 .....	20a
APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION, FILED FEBRUARY 24, 2023 .....	22a

## TABLE OF AUTHORITIES

<b>CASES:</b>	<b>PAGE</b>
<i>Blakely v. Washington</i> , 124 S. Ct. 2531 (2004).....	8
<i>Candela-Rios v. Sessions</i> , No. 17-50379 (5th Cir. Jun. 11, 2018) .....	10
<i>Gardner v. Florida</i> , 430 U.S. 348 (1977).....	6
<i>In re Khan</i> , 28 I&N Dec. 850 (B.I.A. Nov. 01, 2024).....	10
<i>In the Matter of Samuel Winship</i> , 397 U.S. 358 (1970).....	7, 8, 9
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	10
<i>Randall Prince v. City and County of San Francisco, California</i> , 357 U.S. 513 (1958).....	9
<i>Townsend v. Burke</i> , 334 U.S. 736 (1948).....	7
<i>United States v. Fatico</i> , 458 F. Supp. 388 (E.D.N.Y. 1978) .....	9, 10
<i>United States v. Fatico</i> , 603 F.2d 1053 (2d Cir. 1979) .....	7
<i>United States v. Jackson</i> , 351 F. Supp. 2d 108 (S.D.N.Y. 2004) .....	8
<i>United States v. Lee</i> , 818 F.2d 1052 (2d Cir. 1987) .....	8
<i>United States v. Staten</i> , 466 F.3d 708 (9th Cir. 2006) .....	7

<i>United States v. White,</i> 23-10194 (5th Cir. Dec. 05, 2024).....	1
<i>Williams v. New York,</i> 337 U.S. 241 (1949).....	6
<i>Woodby v. Immigration &amp; Naturalization Serv.,</i> 385 U.S. 276 (1966).....	10, 11
<b>CONSTITUTION:</b>	
Fifth Amendment .....	2
Sixth Amendment .....	1, 2
<b>STATUTES &amp; RULES:</b>	
18 U.S.C. § 922(g)(1).....	3
18 U.S.C. § 924(a)(2).....	3
28 U.S.C. § 1254(1) .....	2
8 C.F.R. § 1240.8(a) (2024) .....	10
Fed. R. Evid. 401 .....	10
Fed. R. Evid. 404 .....	10

**TO THE HONORABLE JUSTICES  
OF THE SUPREME COURT:**

The Petitioner respectfully prays that a Writ of Certiorari issue to review the final decision of the Federal Fifth Circuit Court of Appeals in this case. The Opinion was issued on December 5, 2024 and no motion for rehearing was filed.

**OPINIONS BELOW**

This Petition for Writ of Certiorari stems from the United States Fifth Circuit opinion in *United States v. White*, 23-10194 (5th Cir. Dec 05, 2024).

“White contends the extraneous allegation of attempted murder was used to enhance his sentence based on one probation officer’s opinion that the allegation was proven by a preponderance of the evidence, not beyond a reasonable doubt. The Government responds that White’s argument is foreclosed because, at sentencing, facts relevant to the determination of the guideline range are decided by a preponderance of the evidence...Binding precedent leads us to agree with the Government. We have repeatedly rejected Sixth Amendment challenges to judicial factfinding by a preponderance of the evidence at sentencing where the defendant’s sentence ultimately falls within the statutory maximum term.” (Appendix 15a).

## **JURISDICTION**

This case was appealed to and affirmed by the Fifth Circuit Court of Appeals on December 5, 2024. This petition for Writ of Certiorari is filed within 90 days after entry of the judgment of the Fifth Circuit. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1) and Rule 13 of the Supreme Court of the United States.

## **STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the Constitution of the United States of America, which reads as follows:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, no be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the Constitution of the United States of America, which reads as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall

have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense.

## **STATEMENT OF THE CASE**

### **A. Course of Proceedings and Disposition Below.**

The Petitioner Mr. Leroy Harold White, Jr. was charged by indictment, filed On September 14, 2022, with Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. §922(g)(1) & 924(a)(2). (ROA 14 – 15). The indictment alleged that on or about July 29, 2022, Petitioner, knowing that he had been convicted of a crime punishable by imprisonment for a term exceeding one year, that is, a felony offense, did knowingly possess, in and affecting interstate and foreign commerce, a firearm, to wit: a Smith and Wesson, model SD40VE, .40 caliber pistol. (ROA 15).

On October 26, 2022, Petitioner entered a plea of guilty to Count 2 of the indictment without a Plea Agreement. (ROA 160). Petitioner returned to court on January 7, 2022 and received the maximum possible sentence of 120 months and a special assessment of \$100. (ROA 56 - 57).

Petitioner filed a timely notice of appeal on February 27, 2023. (ROA 60).

He was subsequently granted oral argument in the Fifth Circuit Court of Appeals on October 8, 2024. The Fifth Circuit issued an opinion affirming his sentence on December 5, 2024. (Appendix 1a).

## **B. Statement of Facts**

The incident giving rise to this case involves four primary actors: two bar patrons and two security guards. On the night of the incident, Petitioner and a man named Pearson were working as security guards at a bar called JJ's Corner. Due to the high frequency of shootings at the bar, Petitioner concealed a Smith & Wesson .40 caliber hand gun on his person that night for protection.

A short time before Petitioner arrived to work, two patrons named Johnson and Cornelius went to JJ's Corner. Johnson entered the bar with a concealed Ruger hand gun, and was also in violation of the bar's dress code for wearing a basketball jersey. Petitioner is a 53 year old, thin man, while Johnson and Cornelius appeared to be around 30 years old and much larger than Petitioner. (ROA 214; 253; 248).

Petitioner approached Johnson and requested that he leave the bar due to the dress code violation. An argument ensued between the two security guards and the two patrons. Cornelius began displaying aggressive body language, setting his drink down and hiking his pants up before moving uncomfortably close to Petitioner while sticking his finger in Petitioner's face. (ROA 248). Pearson

reported to the police that Cornelius and Johnson threatened to kill Pearson and Petitioner during this confrontation. (ROA 244).

Once Cornelius and Johnson's intentions became clear to Petitioner, he struck Cornelius with an elbow but was unsuccessful at subduing him. Cornelius shoved Petitioner into a corner and began pummeling him with his fists. Petitioner was pinned in the corner and unable to fight back, but did manage to unholster his weapon and placed it against Cornelius's head. This maneuver was still not enough to deter Cornelius's assault on Petitioner, so Petitioner pointed the gun into the air and fired one shot near Cornelius's head. The shot was enough to cause Cornelius to flee, and Petitioner made no effort to pursue any further engagement with Cornelius. Petitioner now turned his attention to protecting his co-worker Pearson from Johnson. Johnson had drawn his Ruger at this point of the altercation. Instead of firing his gun, Petitioner tried to subdue Johnson by striking him, but was unsuccessful. Johnson then fired multiple shots at Petitioner, hitting him twice. Petitioner attempted to return fire but his weapon jammed. Johnson then proceeded to fire indiscriminately into a nearby crowd, striking an innocent bystander in the foot. Petitioner was shot in the left bicep and suffers from chronic pain and limited range of motion as a result. (ROA 229).

Petitioner in this case plead guilty to Possession of a Firearm by a Convicted Felon. (ROA 15; 160). In his PSR, the probation department recommended the

offense level be calculated under the attempted murder guidelines pursuant to the 2X1.1 cross-reference for unadjudicated conduct. (ROA 19). The findings of the probation department were adopted by the Sentencing Court. (ROA 191).

The cross reference increased Petitioner's base offense level from 14 to 27. (ROA 240; 286).

## **REASONS FOR GRANTING THE WRIT**

Criminal defendants enjoy the protections of due process at trial and throughout the sentencing process. *Gardner v. Florida*, 430 U.S. 349, 357 (1977). Although the sentencing process is still subject to due process protections it does not require all the procedural safeguards and strict evidentiary limitations of the criminal trial itself. *Williams v. New York*, 337 U.S. 241, 245 (1949).

According to the Sentencing Commission, in Fiscal Year 2022, 97.5% of cases result in a plea of guilty. United States Sentencing Commission, Statistical Information Packet - Fiscal Year 2022 Fifth Circuit. As a result, for nearly all criminal defendants, sentencing is the only critically important stage of the criminal prosecution process.

A sentencing hearing violates the protections of due process if a sentence is enhanced based on factual findings that are derived from misinformation,

misunderstanding, or material false assumptions. *Townsend v. Burke*, 334 U.S. 736, 740 - 741 (1948).

A higher burden a proof on the prosecuting agency reduces the risk of convictions resting on factual error. *In the Matter of Samuel Winship*, 397 U.S. 358, 363 (1970). A person accused of a crime would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case. *Id.*

Most circuits currently permit a sentencing court to alter the sentencing guidelines based on unadjudicated extraneous conduct if the court finds that a preponderance of the evidence supports the allegation. (Appendix 15a). This practice, however, is not rooted in the Constitution nor Supreme Court precedent. The Ninth Circuit is currently the only circuit to hold that a clear and convincing standard of proof applies to enhancements that have an “extremely disproportionate” effect on the guidelines range. *See United States v. Staten*, 466 F.3d 708, 718 (9th Cir. 2006). In that case the Ninth Circuit held that a 15-level increase under USSG §2D1.1 required clear and convincing proof due to Due Process concerns. *Id.* Although a defendant’s due process rights are reduced at sentencing, it does not require all the procedural safeguards and strict evidentiary rules of the criminal trial itself. *U.S. v. Fatico*, 603 F.2d 1053 (2nd Cir. 1979).

There are strong constitutional arguments against judicial enhancement of punishment without an admission of misconduct or clear and convincing evidence of alleged misconduct that goes beyond the minimum required by the indictment.

*United States v. Lee*, 818 F.2d 1052, 1058 (2d Cir.1987) (Oakes, J. concurring).

The United States Constitution and common law is clear that facts are better discovered by adversarial testing before a jury than by judicial or administrative inquiry. *Blakely v. Washington*, 124 S.Ct. 2531 (2004).

“[F]air-minded jurists would be troubled by the notion that [a Defendant] could in effect be sentenced for such a serious offense [due to a cross reference] based on a finding of guilt by a judicial officer rather than a jury, based on a preponderance of the evidence rather than proof beyond a reasonable doubt, after a relatively informal fact-finding procedure without the guarantees provided in a traditional trial.” *U.S. v. Jackson*, 351 F.Supp.2d 108, 113 - 114. (S.D. N.Y. 2004).

The question presented to the Court is what burden of proof is appropriate when a sentencing court is making factual findings regarding unadjudicated conduct used at sentencing?

The choice of the burden of proof for a particular hearing is a reflection of the comparative social costs of erroneous factual determinations. *Winship*, 397 U.S. at 358, (Justice Harlan concurring).

In litigation there is always a margin of error, typically an error in factfinding, which both parties must take into account. *Randall Prince v. City and County of San Francisco, California*, 357 U.S. 513, 525 (1958). "Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of producing a sufficiency of proof in the first instance." *Id.* at 525 – 526.

As a general rule, a "preponderance of the evidence" — more probable than not — standard is relied upon in civil suits where the law is indifferent as between plaintiffs and defendants, but seeks to minimize the probability of error. *United States v. Fatico*, 458 F.Supp. 388, 403 (E.D. N.Y. 1978). In such cases, we view it as no more serious in general for there to be an erroneous verdict in the defendant's favor than for there to be an erroneous verdict in the plaintiff's favor. *In re Winship*, 397 U.S. at 371-72. (Justice Harlan concurring)(footnotes omitted). A preponderance of the evidence standard therefore seems peculiarly appropriate for, as explained most sensibly, it simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence before he may find in favor of the party who has the burden to persuade the judge of the fact's existence." *Id.*

In cases involving libel suits that implicate constitutional concerns, a plaintiff must prove factual allegations by “clear and convincing” evidence. *New York Times Co. v. Sullivan*, 376 U.S. 254, 284 - 285 (1964).

Although it is no longer binding precedent, many courts historically required proof of extraneous crimes admitted under Federal Rules of Evidence 401 and 404 to be proven by clear and convincing evidence. *United States v. Fatico*, 458 F.Supp. 388, 404 - 405 (E.D. N.Y. 1978).

In a deportation proceeding, the Government must demonstrate by clear and convincing evidence that the respondent’s criminal convictions are deportable. 8 C.F.R. § 1240.8(a) (2024). This includes an attempt by the Government to prove that an alien’s prior criminal conviction qualifies as a crime of moral turpitude. *In re Khan*, 28 I&N Dec. 850, 4081, p. 3 (B.I.A. Nov 01, 2024). The alleged alienage of the respondent must further be proven by clear, unequivocal, and convincing evidence. *Candela-Rios v. Sessions*, No. 17-50379 (5th Cir. Jun 11, 2018).

In *Woodby v. Immigration & Naturalization Serv.*, this Court explained: To be sure, a deportation proceeding is not a criminal prosecution. But it does not syllogistically follow that a person may be banished from this country upon no higher degree of proof than applies in a negligence case. This Court has not closed its eyes to the drastic deprivations that may follow when a resident of this country is compelled by our Government to forsake

all the bonds formed here and go to a foreign land where he often has no contemporary identification. *Woodby v. Immigration & Naturalization Serv.*, 385 U.S. 276, 285-86 (1966). Therefore it is incumbent upon the Government in such proceedings to establish the facts supporting deportability by clear, unequivocal, and convincing evidence. *Id.* at 277.

Petitioner in this case was similarly situated to an alien who faces deportation proceedings after pleading guilty to a criminal conviction. Both respondents are already adjudicated guilty, all that is left is to determine the severity of the action to be taken by the sentencing court. In order to make that determination, evidence must be presented for the court to make findings. Both courts will hear about unadjudicated conduct and other bad acts not admitted to as part of the initial plea of guilty. However, current case law affords the convicted alien a significantly higher burden of proof, clear, convincing, unequivocal, merely to survive deportation. In nearly every case, the criminal defendant facing a much more severe loss of life, liberty, and property than someone who is only facing deportation, yet the defendant has to fight against one of the lowest burdens of proof afforded by our judicial system, preponderance of the evidence.

## CONCLUSION AND PRAYER

For these reasons, Petitioner respectfully prays that the petition for Writ of Certiorari to the United States Supreme Court issue to consider whether constitutional protections require a burden of proof higher than preponderance of the evidence at a sentencing for a criminal defendant.

Respectfully submitted,

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## **APPENDIX**

**TABLE OF APPENDICES**

	<i>Page</i>
APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 5, 2024.....	1a
APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED DECEMBER 5, 2024.....	20a
APPENDIX C — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION, FILED FEBRUARY 24, 2023.....	22a

United States Court of Appeals  
for the Fifth Circuit

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No. 23-10194

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 5, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LERoy HAROLD WHITE, JR.,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:22-CR-276-2

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Before WILSON, DOUGLAS, *Circuit Judges*, and VITTER, *District Judge*.<sup>\*</sup>  
PER CURIAM:<sup>†</sup>

Following an altercation that culminated in a shooting between James Johnson and Leroy Harold White, Jr., in which White fired a gun near Tyrone Cornelius's head, White pleaded guilty to being a felon in possession and was sentenced to 120 months' imprisonment. White appeals his sentence on three grounds: (1) the district court improperly applied U.S.S.G.

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<sup>\*</sup> United States District Judge for the Eastern District of Louisiana, sitting by designation.

<sup>†</sup> This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 23-10194

§ 2A2.1(a)(2)—the guideline for attempted murder—based on information external to the indictment and factual resume and the erroneous findings that he acted with the specific intent to kill Cornelius and did not act in self-defense, (2) the application of § 2A2.1(a)(2) based on judicial factfinding violated his Sixth Amendment right to a jury, and (3) his sentence is substantively unreasonable. We AFFIRM White’s sentence.

## I

On September 14, 2022, a federal grand jury returned a two-count indictment against Leroy Harold White, Jr., and James Edward Johnson, charging each with one count of possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). As to White, the indictment alleged that on July 29, 2022, he possessed a Smith and Wesson, model SD40VE, .40 caliber pistol. White pleaded guilty, without a plea agreement, before a magistrate judge, and his plea was accepted by the district court. In the factual resume supporting his plea, White admitted that he possessed the firearm, as alleged, while he was working at JJ’s Corner Lounge in Arlington, Texas. He further admitted that he fired the weapon one time during an altercation.

In the presentence investigation report (“PSR”), the probation officer included additional details about the July 29 incident. According to the PSR, while White and Victor Pearson were working as security guards at JJ’s Corner Lounge, White asked Johnson to leave because he was in violation of the bar’s dress code. Johnson refused, and an argument ensued between White, Johnson, and another patron, Tyrone Cornelius. White struck Cornelius in the face with his elbow, after which Cornelius punched White multiple times. White then “pulled out a pistol from his waistband, pointed it toward Cornelius’s head, and attempted to fire a shot; however, the firearm experienced a malfunction and did not fire a bullet.” Next,

No. 23-10194

Johnson pulled out his own handgun and fired a shot toward a group of people who had just entered the club, striking one of them in the foot. White then struck Johnson in the head using his left hand, and Johnson responded by firing multiple shots at White.

The instant appeal stems from the district court's interpretation of cross-reference provision U.S.S.G. § 2K2.1(c)(1)(A). Section 2K2.1(c)(1)(A) provides that if the defendant "used or possessed any firearm . . . cited in the offense of conviction in connection with the commission or attempted commission of another offense," or "possessed . . . a firearm cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense," then § 2X1.1 should be applied with respect to the other offense "if the resulting offense level is greater than that determined" under the guideline for possession of a firearm by a felon. Under § 2X1.1, the base offense level is determined "from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty." U.S.S.G. § 2X1.1(a).

Pursuant to §§ 2K2.1(c)(1)(A) and 2X1.1, the probation officer determined that White's substantive offense was assault with intent to commit murder and applied § 2A2.1 to establish White's base offense level. Under § 2A2.1, the base offense level is "33, if the object of the offense would have constituted first degree murder," or "27, otherwise." U.S.S.G. § 2A2.1. The probation officer found that White's conduct warranted a base offense level of 27 pursuant to § 2A2.1(a)(2) and, after subtracting three levels for acceptance of responsibility, computed a total offense level of 24. Based on the total offense level, and White's criminal history category of II, the Guidelines imprisonment range was 57 to 71 months. However, due to concerns that White's criminal history and likelihood to recidivate were

No. 23-10194

underrepresented, the probation officer recommended an upward departure pursuant to § 4A1.3(a)(1).

White filed nine written objections to the PSR, arguing, in relevant part, that the offense level contained in the PSR was derived from the “baseless assertion that [he] attempted murder” and the PSR’s description of the incident was incorrect. He offered his version of the incident and submitted a firearms report, two police reports, and a surveillance video from JJ’s Corner Lounge.

According to White, after he asked Cornelius to leave, Cornelius put down his drink, hiked up his pants, stuck his finger in White’s face, and threatened to kill White and Pearson. Citing the police reports, White alleged that Pearson reported the verbal threats to police. White also claimed that Johnson shouted threats in his face and shoved another security guard with an elbow. According to White, it was after all of these aggressive actions that he struck Cornelius. White further asserted that Cornelius, a much larger and younger man than White, pinned him against a wall and pummeled him before White ever drew his weapon. White alleged that he then fired “a warning shot to protect himself” and did not pursue any conflict with Cornelius after the shot. White explained that, after Cornelius stopped assaulting him, he attempted to help his co-worker, Pearson, who was being assaulted by Johnson. At that point, White claimed that Johnson pulled out his own gun and shot White. White asserted that he attempted to fire back, but his gun jammed and did not fire.

In response to White’s objections, the Government argued that White was “the initiator of violence” because he struck Cornelius with his elbow after a verbal disagreement. Citing the surveillance video and a still shot taken from that video, the Government asserted that White did not fire a warning shot, but instead aimed his weapon at Cornelius’s head and fired a

No. 23-10194

shot, though the gun malfunctioned. The Government further asserted that White continued to be the aggressor because after the first shots were fired, he attempted to fire his gun again.

At the sentencing hearing, White argued that there was no evidence that he wanted to kill Cornelius because that theory hinged on the faulty idea that White's gun malfunctioned while he was fighting with Cornelius. White contended that the surveillance video showed that his gun malfunctioned after he fired his warning shot, when Johnson had his gun pointed at White, and did not show White trying to clear a gun jam before that point. As to the still photo of White aiming his gun at Cornelius's head, White argued that this is also proof of a lack of intent to kill Cornelius because the still photo does not show him pulling the trigger. White also disputed whether he initiated the incident, as Cornelius and Johnson had threatened to kill him and Pearson.

The Government responded that White was the first one to pull out a gun and the first one to fire it. The Government further argued that because he fired his gun "millimeters from another individual's head," White had an intent to kill and a reckless disregard for the life of that person.

The district court ultimately overruled White's objections, concluding that the application of § 2A2.1(a)(2) was appropriate based on its review of the surveillance video. In support of this decision, the court noted that it did not believe that the evidence showed that White's actions were justified. The court then adopted the PSR's factual findings and guidelines calculations.

The Government next argued at the sentencing hearing that White's sentence should be similar to the one that Johnson received, despite the difference in their guideline calculations. In particular, the Government noted that White's criminal history computation was lower than Johnson's

No. 23-10194

because White had a previous murder conviction that received zero points. The Government emphasized that White had a long history of violent offenses, including multiple assaults causing bodily injury.

White requested a downward variance, specifically, a sixteen-month prison term. His counsel explained that some of his criminal history was not scored under the Guidelines because those offenses occurred long ago, and asserted that he had matured since then. White also spoke on his own behalf, explaining that he reacted the way he did during the incident because he believed that his life was in danger, but that he “didn’t mean to make this chain reaction go that far.”

After hearing the parties’ arguments, the district court determined that an upward variance was warranted and sentenced White to 120 months’ imprisonment, plus three years of supervised release. White timely filed a notice of appeal. FED. R. APP. P. 4(b)(A)(i). His appeal was held in abeyance pending our decision in *United States v. Santiago*, 96 F.4th 834 (5th Cir. 2024), another case involving the application of § 2A2.1. After the mandate issued in *Santiago*, the parties submitted supplemental briefing pursuant to a court directive.

II

A

White argues we should review *de novo* the district court’s application of § 2A2.1(a)(2) because the facts in the indictment and factual resume supporting his plea do not show that he committed attempted murder. The Government argues that clear error is appropriate because the thrust of White’s argument is that the facts were insufficient to show that he intended to kill Cornelius.

No. 23-10194

We review a district court's factual findings during sentencing for clear error and its interpretation of the Sentencing Guidelines, including its application of the cross-reference provisions of § 2K2.1, *de novo*. *United States v. Hicks*, 389 F.3d 514, 529 (5th Cir. 2004). To the extent White argues the district court improperly applied § 2A2.1 to calculate his offense level because it did so based on facts outside the indictment and factual resume, *de novo* review applies. However, the factual determinations the district court made as to White's intent to kill and self-defense are subject to clear error review. Under this standard, “[a] factual finding is not clearly erroneous if it is plausible in light of the record as a whole.” *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019) (internal quotation marks and citation omitted).

## B

As an initial matter, White cites *United States v. Principe*, 203 F.3d 849 (5th Cir. 2000), for the proposition that the application of § 2A2.1(a)(2) pursuant to § 2K2.1's cross-reference provision was improper because it was based on information not included in the indictment and the factual resume supporting his plea. In support of this argument, White asserts that there is no information contained in the pleading documents to support the allegation that he possessed the specific intent to kill Cornelius. White also contends that there is no information to negate any of the potential justifications for firing the weapon into the air during the fight.<sup>1</sup> The Government did not respond to this argument.

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<sup>1</sup> At oral argument, White argued for the first time that even if specific intent to kill were established, the district court erred in applying § 2A2.1(a)(2) because White's substantive offense would be attempted voluntary manslaughter, not attempted murder. We have “repeatedly and emphatically held [that] we cannot and will not consider arguments raised for the first time at oral argument.” *Jackson v. Gautreaux*, 3 F.4th 182, 188 n.\* (5th Cir. 2021). Though White contends he preserved the argument in a sentencing

No. 23-10194

“[T]he selection of the applicable guideline begins with reference to, first, the count of conviction, and, then, the Statutory Index.” *United States v. Stanford*, 883 F.3d 500, 505 (5th Cir. 2018). “Where . . . the Statutory Index provides more than one applicable guideline for a statute, the Guidelines instruct district courts to ‘determine which of the referenced guideline sections is most appropriate for the offense conduct charged in the count of which the defendant was convicted.’” *Id.* at 505–06 (quoting U.S.S.G. § 1B1.2(a) & cmt. (n.1)). Cross-reference provisions, however, are not determined solely by the conduct charged in the count of conviction. Rather, U.S.S.G. § 1B1.3(a) “requires that relevant conduct be applied to determine the cross references ‘unless otherwise specified.’” *United States v. Gonzales*, 996 F.2d 88, 91 (5th Cir. 1993) (quoting § 1B1.3(a)). “Relevant conduct” includes “all acts and omissions committed . . . or willfully caused by the defendant . . . that occurred during the commission of the offense of conviction,” “all harm that resulted from . . . and . . . that was the object of such acts and omissions,” and “any other information specified in the applicable guideline.” U.S.S.G. § 1B1.3(a).

Section 2K2.1 is the sole sentencing guideline in the Statutory Index for 18 U.S.C. § 922(g), and the district court applied § 2A2.1(a)(2) pursuant to § 2K2.1’s cross-reference provision, § 2K2.1(c)(1). Because

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memorandum submitted to the district court, we disagree. White’s sentencing memorandum mentions manslaughter one time as part of a citation to *United States v. Jackson*, 351 F. Supp. 2d 108 (S.D.N.Y. 2004), that discussed the possibility of reducing attempted murder to manslaughter where intent to kill can be established and self-defense is unavailable. The rest of the sentencing memorandum focuses only on the argument that White lacked the intent to kill Cornelius. “Citing cases that may contain a useful argument is simply inadequate to preserve that argument for appeal; ‘to be preserved, an argument must be pressed, and not merely intimated.’” *In re Fairchild Aircraft Corp.*, 6 F.3d 1119, 1128 (5th Cir. 1993) (quoting *Hays v. Sony Corp.*, 847 F.2d 412, 420 (7th Cir. 1988)). Thus, White “waived this argument by raising it for the first time at oral argument.” *United States v. Richard*, 775 F.3d 287, 294 n.1 (5th Cir. 2014).

No. 23-10194

§ 2K2.1(c)(1) is a cross-reference provision, its applicability depends on White’s “relevant conduct,” unless the provision specifies otherwise. *See Gonzales*, 996 F.2d at 91; U.S.S.G. § 1B1.3(a). While some cross-reference provisions specify a scope of consideration narrower than relevant conduct, *see, e.g.*, § 2B1.1(c)(3), § 2K2.1(c)(1)(A) specifies a broader scope. The only limitation on the conduct that may trigger its application is that the conduct involve the firearm “cited in the offense of conviction.”<sup>2</sup> § 2K2.1(c)(1)(A). Here, there is no dispute that the firearm cited in the offense of conviction is the firearm involved in the offense governed by the cross-reference provision. Thus, the district court properly relied on additional facts about the July 29 incident to apply § 2A2.1(a)(2) pursuant to § 2K2.1’s cross-reference provision.<sup>3</sup>

## C

Alternatively, White argues that even if the district court were permitted to consider information external to the indictment and factual resume, the court still erred because such information does not show that he had a specific intent to kill Cornelius. White further contends that the evidence shows he acted in self-defense. The Government responds that § 2A2.1(a)(2) can be applied without a showing of a specific intent to kill and,

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<sup>2</sup> *See Gonzales*, 996 F.2d at 92 (“[T]he broad language of section 2K2.1(c)(1), particularly its unlimited references to ‘another offense,’ indicates that it is not restricted to offenses which would be relevant conduct but embraces all illegal conduct performed or intended by [a] defendant concerning a firearm involved in the charged offense.”) (quoting U.S.S.G. § 2K2.1(c)(1)).

<sup>3</sup> Even if the district court were limited to considering only “relevant conduct,” it likely properly considered information beyond the indictment and factual resume to apply § 2A2.1(a)(2), as White does not dispute that such information concerns acts he committed during the offense for which he was convicted. *See* § 1B1.3(a) (defining “relevant conduct” to include “all acts and omissions committed, . . . or willfully caused by the defendant . . . that occurred during the commission of the offense of conviction”).

No. 23-10194

regardless, the evidence presented shows that White acted with the specific intent to kill Cornelius. The Government also argues that the district court correctly rejected White's self-defense argument.

We need not reach the question of whether § 2A2.1(a)(2) requires a showing of specific intent because, on clear error review, the district court did not err in finding that White had an intent to kill Cornelius.

"Intent is often established by inference from circumstantial evidence." *United States v. Conlan*, 786 F.3d 380, 385 (5th Cir. 2015). Citing the Sixth Circuit and an unpublished decision of our court, the Government argues that White had the specific intent to kill Cornelius because he pointed his firearm directly at Cornelius's head and then pulled the trigger. White does not contest that he had the gun pointed at Cornelius's head before he pulled the trigger, but he argues that the video shows that he removed the gun from Cornelius's temple and pointed it in the air before firing it.<sup>4</sup> White further argues that the cases cited by the Government are distinguishable because they involved shooting a gun at a victim or in a victim's direction.

While it may be possible to infer White's version of the facts, "[o]n clear-error review, we accept the 'trial court's factual findings if they are plausible in light of the record, even though we might have weighed the evidence differently.'" *Santiago*, 96 F.4th at 849 (quoting *Taylor-Travis v. Jackson State Univ.*, 984 F.3d 1107, 1116 (5th Cir. 2021)). Because the video evidence at sentencing showed White place the gun to Cornelius' head before firing a shot next to Cornelius's head in the midst of a rapidly evolving fistfight, the record also plausibly supports the district court's factual finding

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<sup>4</sup> White appears to be referring to the surveillance footage time-stamped as 2:56-3:03, where he fired a shot next to Cornelius's head immediately after he pointed the gun at Cornelius's head.

No. 23-10194

that while White had his gun pointed at Cornelius's head, the gun malfunctioned when he tried to shoot. Though there is no binding circuit precedent regarding intent under these circumstances,<sup>5</sup> the Sixth Circuit has held that pointing a gun at someone and firing it shows a specific intent to kill. *See United States v. Grant*, 15 F.4th 452, 458 (6th Cir. 2021) (finding no clear error in district court's determination that defendant had a specific intent to kill where defendant aimed gun in victim's direction and fired); *see also United States v. Howell*, 17 F.4th 673, 690 (6th Cir. 2021) (the Sixth Circuit "has concluded that specific intent to kill could be inferred from a defendant firing a gun aimed at an individual" (internal quotation marks and citations omitted)). We agree and therefore conclude that the district court did not err in overruling White's objection to the application of § 2A2.1(a)(2) based on the argument that he lacked the specific intent to kill Cornelius. To the extent White argues that the evidence shows he only shot into the air rather than at Cornelius when the gun was pressed to his head, he asks that we re-weigh the evidence, which we decline to do on clear error review. *See Santiago*, 96 F.4th 849.

White also argues that the evidence does not support the district court's application of § 2A2.1(a)(2) because his conduct was justified as an act of self-defense. At sentencing, the district court stated that it did not

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<sup>5</sup> In an unpublished opinion, we held there was "no evidence at trial to suggest that [the defendant] shot [the victim accidentally], or that he lacked specific intent to kill him" where "[a]ll witnesses were in agreement . . . that [he] pointed the gun at [the victim] and pulled the trigger." *Adanandus v. Johnson*, 114 F.3d 1181, 1997 WL 256743, at \*5 (5th Cir. Apr. 7, 1997). More recently, in *United States v. Bell*, another unpublished opinion, we rejected the argument that the district court erroneously applied § 2A2.1(a)(1) without a showing of a specific intent to kill because the defendant did "not dispute that . . . he began shooting a handgun in [his girlfriend's] general direction" and "[s]everal shots hit the vehicle [his] girlfriend was hiding behind." No. 23-50168, 2023 WL 7549508, at \*1 (5th Cir. Nov. 13, 2023).

No. 23-10194

believe the evidence showed that White's actions were justified. Since then, we held in *Santiago* that a district court should not cross-reference § 2A2.1 without considering whether the defendant's conduct was justified as self-defense because "[s]elf-defense is an affirmative defense to a charge of murder under [18 U.S.C.] § 1111 that negates the[] elements of criminal behavior." 96 F.4th at 849–50 (internal quotation marks and citations omitted). *Santiago* also articulated a framework for analyzing this issue. *Id.* at 850. While the initial burden of production rests on the defendant asserting self-defense, once the defendant has met that burden, the Government must provide proof to negate the self-defense claim. *Id.* at 849–50.

To meet his burden of production under this framework, White must present evidence that:

(1) he was under an unlawful and present, imminent, and impending threat of such a nature as to induce a well-grounded apprehension of death or serious bodily injury; (2) he had not recklessly or negligently placed himself in a situation in which it was probable that he would be forced to choose the criminal conduct; (3) he had no reasonable, legal alternative to violating the law, a chance both to refuse to do the criminal act and also to avoid the threatened harm; and (4) a direct causal relationship may be reasonably anticipated between the criminal action taken and the avoidance of the threatened harm.

*Id.* at 850 (citations omitted). In *Santiago*, the defendant met his burden of production, but the district court did not seek, and the Government never provided, proof to rebut his self-defense claim. Thus, we found the district court clearly erred in applying § 2A2.1(a)(2). *Id.*

White argues that the district court failed to address his self-defense claim for which he met his burden of production. As an initial matter, White

No. 23-10194

argues the district court's statement that the evidence does not show his conduct was justified is too vague to constitute a ruling on his self-defense claim and misconstrues the burden-shifting framework set forth in *Santiago*. With respect to the first *Santiago* element, White argues Pearson reported to police that Cornelius and Johnson verbally threatened to kill both Pearson and him, and the video shows Cornelius putting down his drink, hiking up his pants, getting very close to White's face and speaking in a very agitated manner. Regarding the second element, he argues that he was simply trying to do his job as the bouncer for the business. White argues that he also satisfied the third element because Cornelius made it clear he was willing to kill White and Pearson and was acting very aggressively. Finally, with respect to the fourth element, White argues there was a "direct causal relationship between the criminal action taken and the avoidance of the threatened harm," *Santiago*, 96 F.4th at 850, because as soon as the shot was fired, Cornelius disengaged and fled the scene.

In response, the Government argues that the district court's statement that White's conduct was not justified was a finding the district court made in direct response to the self-defense claim White raised and the video evidence presented at sentencing. The Government also argues that White failed to satisfy the second *Santiago* element because he provoked and then repeatedly escalated the attack in this case. Specifically, the Government contends that White escalated the verbal confrontation to a physical one by violently striking Cornelius twice in the face with his elbow, and again escalated the physical encounter by taking a loaded gun from his waistband, pressing it against Cornelius's head, and pulling the trigger. The Government further argues that it rebutted White's self-defense claim by directing the district court to the surveillance video, which shows White was "the initiator of the violence," and continued to be the aggressor after the first shots were fired.

No. 23-10194

The second *Santiago* element is “akin to a prohibition against ‘provok[ing] a fight and then rely[ing] on a claim of self-defense when that provocation results in a counterattack.’” 96 F.4th at 850 (quoting *United States v. Branch*, 91 F.3d 699, 717 (5th Cir. 1996)). Here, the district court was presented with evidence suggesting that both White and Cornelius provoked the fight. On one hand, White offered police reports showing that Pearson told police Cornelius and Johnson threatened to kill White and Pearson. On the other hand, the surveillance video shows White throwing the first punch, to which Cornelius responded by punching him back repeatedly. “The clear error standard of review is a deferential one.” *United States v. Rodriguez*, 630 F.3d 377, 380 (5th Cir. 2011). This court will only find clear error where “a review of all the evidence leaves us with the definite and firm conviction that a mistake has been committed.” *Barfield*, 941 F.3d at 761–62. Based on the evidence presented to the district court, it is plausible that White provoked the fight and then relied on a claim of self-defense when Cornelius responded by punching back. Thus, we decline to vacate the district court judgment on grounds that it applied § 2A2.1(a)(2) without considering whether White acted in self-defense.<sup>6</sup> See *Santiago*, 96 F.4th at 850 n.31 (clear error review only requires that “the record, . . . in some way, support the court’s declination of [self-defense] if the defendant raises it”).

### III

We next consider White’s argument that the district court’s application of § 2A2.1(a)(2) based on judicial factfinding violated White’s

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<sup>6</sup> Because the record plausibly supports a finding that White failed to meet his burden of production under *Santiago*, we need not address the Government’s alternative argument that it rebutted White’s self-defense claim.

No. 23-10194

Sixth Amendment right to a jury. We review constitutional claims de novo. *United Stats v. Wills*, 40 F.4th 330, 335 (5th Cir. 2022) (citation omitted).

White contends the extraneous allegation of attempted murder was used to enhance his sentence based on one probation officer's opinion that the allegation was proven by a preponderance of the evidence, not beyond a reasonable doubt. The Government responds that White's argument is foreclosed because, at sentencing, facts relevant to the determination of the guideline range are decided by a preponderance of the evidence. The Government further argues that because White was sentenced within the statutory maximum term, judicial factfinding by a preponderance of the evidence, rather than beyond a reasonable doubt, does not run afoul of the Sixth Amendment.

Binding precedent leads us to agree with the Government. We have repeatedly rejected Sixth Amendment challenges to judicial factfinding by a preponderance of the evidence at sentencing where the defendant's sentence ultimately falls within the statutory maximum term. *See United States v. Shah*, 95 F.4th 328, 385 (5th Cir. 2024); *United States v. Hebert*, 813 F.3d 551, 564 (5th Cir. 2015); *United States v. Hernandez*, 633 F.3d 370, 374–75 (5th Cir. 2011); *United States v. Setser*, 568 F.3d 482, 498 (5th Cir. 2009); *United States v. Mares*, 402 F.3d 511, 519 (5th Cir. 2005).

Since June 25, 2022, violations of 18 U.S.C. § 922(g)(1) have a statutory maximum of fifteen years' imprisonment under § 924(a)(8).<sup>7</sup> White's sentence of 120 months, or ten years, falls below the statutory

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<sup>7</sup> From December 21, 2018, through June 24, 2022, violations of § 922(g)(1) were penalized under § 924(a)(2) and carried a ten-year maximum term of imprisonment. *See* 18 U.S.C. § 924(a)(2) (2019).

No. 23-10194

maximum. Thus, his Sixth Amendment challenge is foreclosed by our precedent.

## IV

## A

We now turn to White’s challenge to the substantive reasonableness of his sentence. We consider a challenge to the substantive reasonableness of a sentence “under an abuse-of-discretion standard.” *United States v. Coto-Mendoza*, 986 F.3d 583, 585 (5th Cir. 2021) (internal quotation marks and citation omitted). An abuse of discretion occurs where a sentence “unreasonably fails to reflect the [18 U.S.C. § 3553(a)] sentencing factors” because 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.” *United States v. Nguyen*, 854 F.3d 276, 283 (5th Cir. 2017) (internal quotation marks and citations omitted).

Though a sentence within the guidelines range may be presumed reasonable, this court may not apply a presumption of unreasonableness to a sentence outside the guidelines range. *Id.*; *see also United States v. Khan*, 997 F.3d 242, 247 (5th Cir. 2021) (“The fact that this court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal.” (internal quotation marks and citation omitted)). Rather, we “must give due deference to the district court’s decision that the § 3553(a) factors, on a whole, justify the extent of the variance.” *Gall v. United States*, 552 U.S. 38, 51 (2007). “Thus, a ‘significant variance’ from the sentencing guidelines is permitted where it is ‘commensurate with the individualized, case-specific reasons provided by the district court.’” *Nguyen*, 854 F.3d at 283 (quoting *United States v. Diehl*, 775 F.3d 714, 724

No. 23-10194

(5th Cir. 2011)).<sup>8</sup> However, the district court “is not required to provide a detailed explanation of its reasoning for each factor.” *United States v. Broussard*, 882 F.3d 104, 112 (5th Cir. 2018) (citation omitted).

## B

White argues that his sentence is substantively unreasonable because (1) the district court’s upward variance lacked sufficient individualized justification, as demonstrated by the district court’s consideration of White’s co-defendant’s sentence; and (2) the district court should not have considered White’s unscored criminal history.

The Government responds that the upward variance was supported by detailed reasons centered on the nature and circumstances of the offense, White’s criminal history, and the need to avoid a sentencing disparity with White’s co-defendant. To the extent that White argues his co-defendant’s sentence should not have been considered because he was less culpable, the Government contends this argument simply requests that the Court rebalance the statutory sentencing factors more in his favor.<sup>9</sup>

At sentencing, the district court considered the factors set forth in 18 U.S.C. § 3553(a) in determining White’s sentence. Specifically, the court based its upward variance on (1) the “dangerous” circumstances of White’s

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<sup>8</sup> White cites *United States v. Smith*, 440 F.3d 704, 707 (5th Cir. 2006), for the assertion that the farther a sentence varies from the applicable guideline sentence, the more compelling the justification must be. However, *Smith* made clear that “the [sentencing] court . . . need not engage in robotic incantations that each statutory factor has been considered.” *Id.* at 707. Accordingly, a non-guideline sentence is subject to the same standard of review as a guideline sentence. *Id.* at 708.

<sup>9</sup> The Government also argues that White’s sentence is in the range of upward variances this court has previously upheld. However, as explained above, the substantive reasonableness of a sentence turns on whether it is based on specific, individualized reasons, *Nguyen*, 854 F.3d at 283, not whether it is similar to variances in other cases.

No. 23-10194

offense; (2) his “unique personal background and circumstances”; (3) his “long criminal history of numerous violent crimes,” several of which received zero criminal history points; (4) his “pattern of illegal activity throughout his life”; (5) the fact that he “has been afforded terms of probation and imprisonment [and] sustained multiple revocations”; and (6) the court’s “belie[f] that this sentence [was] necessary to protect the public from further crimes of the defendant.” The court also considered the disparity between White’s sentence and that of his co-defendant, Johnson.

Though White’s sentence of 120 months represents a significant upward variance from the guidelines range of 57 to 71 months, his arguments that the district court failed to make individualized and specific findings to support its upward variance are unavailing. Contrary to White’s assertion, the district court’s consideration of his co-defendant’s sentence does not demonstrate a failure to support his sentence with specific findings. Indeed, § 3553 instructs district courts to consider sentencing disparities between co-defendants when imposing a sentence. 18 U.S.C. § 3553(a)(6).<sup>10</sup> With regard to whether the district court improperly considered White’s unscored criminal history, White refers to the “Sentencing Commission’s policy of allowing cases to age out.” To the extent that White argues the district court’s consideration of unscored criminal history constitutes a failure to give adequate weight to a policy by the Sentencing Commission, as required by § 3553(a)(5), White cites no authority for his position. Moreover, we have previously upheld sentences based on unscored criminal history. *See United States v. Lopez-Velasquez*, 526 F.3d 804, 807 (5th Cir. 2008) (affirming upward variance based in part on defendant’s unscored criminal history, including seven prior deportations); *United States v. Smith*, 440 F.3d 704, 709

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<sup>10</sup> White appears to concede this point in his brief.

No. 23-10194

(5th Cir, 2006) (affirming upward variance based in part on criminal history that had not been accounted for in guidelines-range calculations).

Given our “highly deferential” review for substantive reasonableness and the district court’s stated reasons for White’s sentence, the district court did not abuse its discretion in imposing the upward variance to White’s sentence. *Diehl*, 775 F.3d at 724–25.

V.

For the reasons explained above, we AFFIRM White’s sentence.

United States Court of Appeals  
for the Fifth Circuit

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No. 23-10194

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United States Court of Appeals  
Fifth Circuit

**FILED**

December 5, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

LEROY HAROLD WHITE, JR.,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:22-CR-276-2

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Before WILSON, DOUGLAS, *Circuit Judges*, and VITTER, *District Judge*.\*

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying

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\* United States District Judge for the Eastern District of Louisiana, sitting by designation.

a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

## UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

Fort Worth Division

UNITED STATES OF AMERICA

## JUDGMENT IN A CRIMINAL CASE

v.

LEROY HAROLD WHITE, JR.

Case Number: 4:22-CR-00276-O(02)

U.S. Marshal's No.: 22422-510

P.J. Meitl, Assistant U.S. Attorney

Blake Burns, Attorney for the Defendant

On October 26, 2022 the defendant, LEROY HAROLD WHITE, JR., entered a plea of guilty as to Count Two of the Indictment filed on September 14, 2022. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; 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 and Forfeiture Notice	07/29/2022	Two

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 Two of the Indictment filed on September 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 February 24, 2023.



REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed February 24, 2023.

Judgment in a Criminal Case

Page 2 of 4

Defendant: LEROY HAROLD WHITE, JR.

Case Number: 4:22-CR-00276-O(2)

## IMPRISONMENT

The defendant, LEROY HAROLD WHITE, JR., is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **ONE HUNDRED TWENTY (120) MONTHS** as to Count Two of the Indictment filed on September 14, 2022. This sentence shall run concurrently with any future sentence which may be imposed in Case No. 1744512 in Tarrant County Criminal Court No. 2 and Case No. 1744513D in the 432nd Judicial District Court, Tarrant County, Texas, which are related to the instant offense. This sentence shall run consecutively to any future sentence which may be imposed in Case No. F-2070995 in Criminal District Court No. 6 of Dallas County, which is unrelated to the instant offense.

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 Two of the Indictment filed on September 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 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

Judgment in a Criminal Case  
Defendant: LEROY HAROLD WHITE, JR.  
Case Number: 4:22-CR-00276-O(2)

Page 3 of 4

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; and,

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.

Judgment in a Criminal Case

Page 4 of 4

Defendant: LEROY HAROLD WHITE, JR.

Case Number: 4:22-CR-00276-O(2)

### **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 to date no victim has submitted any request for restitution.

### **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: the Smith and Wesson, Model SD40VE, .40-caliber pistol, bearing Serial No. FDT6302.

### **RETURN**

I have executed this judgment as follows:

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Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

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United States Marshal

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BY  
Deputy Marshal