

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA SUTHERLAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

/s/ Kevin Joel Page

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- Appendix A Opinion of Fifth Circuit, CA No. 24-10677 consolidated with 24-10589, *United States v. Sutherland*, 2025 WL 799346 (5th Cir. March 13, 2025)(unpublished).
- Appendix B Judgments and Sentences of the United States District Court for the Northern District of Texas, entered November 3, 2023. *United States v. Sutherland*, Dist. Court 3:22-CR-159 and 3:14-CR-111.

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 24-10677
CONSOLIDATED WITH
No. 24-10589
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 13, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSHUA SUTHERLAND,

Defendant—Appellant.

Appeals from the United States District Court
for the Northern District of Texas
USDC Nos. 3:14-CR-111-2, 3:22-CR-159-1

Before JOLLY, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

In this consolidated appeal, Joshua Sutherland appeals his conviction for possession of a firearm by a convicted felon, asserting that 18 U.S.C. § 922(g)(1) is facially unconstitutional under the Second Amendment in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). He

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

No. 24-10677
c/w No. 24-10589

concedes that his argument is foreclosed by *United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), and presents the issue on appeal to preserve it for further review.

Sutherland also appeals the district court's judgment revoking his supervised release and sentencing him to 17 months of imprisonment. He challenges the constitutionality of 18 U.S.C. § 3583(g), which mandates revocation of supervised release and a term of imprisonment for any offender who violates specified conditions of supervised release, including possession of a firearm. Relying on *United States v. Haymond*, 588 U.S. 634 (2019), Sutherland contends that § 3583(g) is unconstitutional because it requires revocation of a term of supervised release and imposition of a term of imprisonment without affording the defendant the constitutionally guaranteed right to a jury trial and proof beyond a reasonable doubt. He concedes that this argument is foreclosed by *United States v. Garner*, 969 F.3d 550, 551-53 (5th Cir. 2020), and presents the issue to preserve it for further review.

The Government has filed an unopposed motion for summary affirmance or, alternatively, for an extension of time in which to file a brief. The Government correctly agrees that Sutherland's challenge to § 922(g)(1) is foreclosed by *Diaz*, and that his challenge to § 3583(g) is foreclosed by *Garner*. See *Diaz*, 116 F.4th at 471-72; *Garner*, 969 F.3d at 551-53.

Because Sutherland's sole arguments on appeal are foreclosed, summary affirmance is appropriate. See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the district court's judgments are AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

JOSHUA SUTHERLAND

§
§
§
§
§
§
§

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:22-CR-00159-S(01)

USM Number: 48114-177

Carolyn A Hill

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before the U.S. Magistrate Judge, which was accepted by the Court	Count 1 of the Indictment, filed April 19, 2022.
<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:

Title & Section / Nature of Offense

18 U.S.C. §§ 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon

Offense Ended

12/16/2021

Count

1

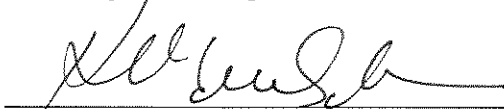
The Defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The Defendant has been found not guilty on count(s)
- ☐ The [charging instrument], filed [date], is dismissed on the motion of the United States.

It is ordered that the Defendant must notify the United States Attorney for this District within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the Defendant must notify the Court and United States Attorney of material changes in economic circumstances.

November 2, 2023

Date of Imposition of Judgment



Signature of Judge

KAREN GREN SCHOLER**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

November 3, 2023

Date of Signature

AO 245B (12/20-KGS) Judgment in a Criminal Case

Judgment -- Page 2 of 7

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:22-CR-00159-S(01)

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Seventy (70) months** as to Count 1 of the Indictment.

This sentence shall run concurrently with any sentence imposed in Case Nos. F-216192 and F-2161691, both pending in the Criminal District Court No. 3 in Dallas County, Texas, as these cases are related to the instant federal offense.

This sentence shall run consecutively to the sentence imposed in the revocation of supervised release in Case No. 3:14-CR-00111-S-2, in the U.S. District Court for the Northern District of Texas, Dallas Division, as this case is not related to the instant federal offense.

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

that Defendant be allowed to serve his sentence at FMC Ft. Worth or the nearest medical facility to the Dallas-Ft. Worth area.

The Court strongly recommends that Defendant receive mental health treatment and therapy offered by the Bureau of Prisons, which may include medication for his current diagnoses. The Court further recommends that Defendant be allowed to participate in the Residential Drug Abuse Program (RDAP), if eligible.

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

☐ The Defendant shall surrender to the United States Marshal:

☐ 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 ### p.m./a.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:

The Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

24-10589.86

AO 245B (12/20-KGS) Judgment in a Criminal Case

Judgment -- Page 3 of 7

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:22-CR-00159-S(01)

SUPERVISED RELEASE

Upon release from imprisonment, the Defendant shall be on supervised release for a term of three (3) years.

MANDATORY CONDITIONS

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.

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*).

AO 245B (12/20-KGS) Judgment in a Criminal Case

Judgment -- Page 4 of 7

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:22-CR-00159-S(01)

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 of, 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

AO 245B (12/20-KGS) Judgment in a Criminal Case

Judgment -- Page 5 of 7

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:22-CR-00159-S(01)

SPECIAL CONDITIONS OF SUPERVISION

The Defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The Defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.

The Defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$20 per month.

AO 245B (12/20-KGS) Judgment in a Criminal Case

Judgment -- Page 6 of 7

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:22-CR-00159-S(01)

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 non-federal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The Defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The Court determined that the Defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

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

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

AO 245B (12/20-KGS) Judgment in a Criminal Case

Judgment -- Page 7 of 7

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:22-CR-00159-S(01)

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 with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ E, 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 of the 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 the Defendant's 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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE
(For **Revocation** of Supervised Release)

v.

JOSHUA SUTHERLAND

Case Number: **3:14-CR-00111-S(2)**USM Number: **48114-177****Carolyn A Hill**

Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	admitted guilt to violation of condition(s)	Three Mandatory Conditions, Standard Condition No. 7, and two Special Conditions [ECF No. 121].
<input type="checkbox"/>	was found in violation of condition(s)	after denial of guilt.

The Defendant is adjudicated guilty of these violations:

The Defendant pleaded true to violations of three mandatory conditions, standard condition no. 7, and two special conditions of the term of supervised release as stated at the revocation hearing held before this Court on November 2, 2023. *See* Petition for Person Under Supervision filed on January 7, 2022 [ECF No. 121].

The Defendant is sentenced as provided in page 2 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The Defendant has not violated condition(s) and is discharged as to such violation(s) condition.

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.

Last Four Digits of Defendant's Soc. Sec. XXXX

Defendant's Year of Birth: 1993

City and State of Defendant's Residence:
Seagoville, Texas

November 2, 2023

Date of Imposition of Judgment

Signature of Judge

KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

November 3, 2023

Date

DEFENDANT: JOSHUA SUTHERLAND
CASE NUMBER: 3:14-CR-00111-S(2)

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Seventeen (17) months**. This sentence shall run consecutively to the sentence imposed in Case No. 3:22-CR-00159-S-1 in the U.S. District Court for the Northern District of Texas, Dallas Division, as this case is not related to the instant offense.

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

that Defendant be allowed to serve his sentence at FMC Ft. Worth or the nearest medical facility to the Dallas-Ft. Worth area.

The Court strongly recommends that Defendant receive mental health treatment and therapy offered by the Bureau of Prisons, which may include medication for his current diagnoses. The Court further recommends that Defendant be allowed to participate in the Residential Drug Abuse Program (RDAP), 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