

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DERRICK DURRELL JONES,

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

United States Court of Appeals for the Fifth Circuit

No. 23-10198
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 21, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DERRICK DURRELL JONES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-446-1

Before SMITH, HIGGINSON, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Derrick Durrell Jones pleaded guilty, without a written plea agreement, to possession of a firearm as a convicted felon. *See* 18 U.S.C. § 922(g)(1). On appeal, Jones argues that § 922(g)(1) is unconstitutional because it (1) violates the Commerce Clause and (2) violates the Second Amendment. As he concedes, he did not preserve these arguments in the

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

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district court. Thus, our review is for plain error only. *See United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014) (reviewing unpreserved constitutional challenge to a federal statute for plain error). To demonstrate plain error, Jones must show a clear or obvious error that affected his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he does so, this court may correct the error but should do so only if it “seriously affects the fairness, integrity or public reputation of judicial proceedings.” *Id.* (internal quotation marks, brackets, and citation omitted).

I.

Jones first argues that § 922(g)(1) is unconstitutional on its face and as applied to him because it exceeds Congress’s authority under the Commerce Clause. He asserts that Congress’s commerce power does not support the “long-accepted interpretation of § 922(g)’s nexus element,” and that the government should be required “to prove more than the firearm’s past moments in commerce.” However, he acknowledges that this court previously has rejected Commerce Clause challenges to § 922(g)(1). *See United States v. Alcantar*, 733 F.3d 143 (5th Cir. 2013).

In *Alcantar*, 733 F.3d at 145, this court recognized that it has “consistently upheld the constitutionality of § 922(g)(1),” even after *United States v. Lopez*, 514 U.S. 549 (1995). This court’s rule of orderliness compels it to follow existing circuit precedent unless the Supreme Court “unequivocally” overrules it. *United States v. Petras*, 879 F.3d 155, 164 (5th Cir. 2018) (internal quotation marks and citation omitted). None of the cases cited by Jones expressly overrule *Alcantar*. Accordingly, this argument is foreclosed. *See United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020) (relying on *Alcantar* to hold that Commerce Clause challenge to § 922(g) conviction was foreclosed).

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II.

Jones also argues that § 922(g)(1) violates the Second Amendment in light of the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), which set forth a new test for assessing the constitutionality of a statute under the Second Amendment, and that the district court’s failure to advise him of its unconstitutionality violated Federal Rule of Criminal Procedure 11. The *Bruen* Court stated that “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” 142 S. Ct. at 2129–30. “The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 2130. Only if the Government meets its burden “may a court conclude that the individual’s conduct falls outside the Second Amendment’s unqualified command.” *Id.* (internal quotation marks and citation omitted).

Before *Bruen*, this court held that § 922(g)(1) does not violate the Second Amendment. *See, e.g., United States v. Darrington*, 351 F.3d 632, 633-34 (5th Cir. 2003). And in his concurring opinion in *Bruen*, Justice Kavanaugh—quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008), and *McDonald v. Chicago*, 561 U.S. 742, 786 (2010)—stated: “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill.” *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (internal quotation marks omitted).

This court has not yet addressed the impact of *Bruen* on the constitutionality of § 922(g)(1) in a case in which the issue was preserved in the district court. In the plain error context, “a lack of binding authority is often dispositive.” *United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir. 2002) (internal quotation marks and citation omitted), *cert. denied*, 143 S. Ct.

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282 (2022). While Jones need not show that his specific challenge has been addressed in a prior decision, “he must at least show error in the straightforward applications of existing cases.” *United States v. Cabello*, 33 F.4th 281, 291 (5th Cir. 2022) (internal quotation marks and citation omitted). Arguments that require the extension of existing precedent cannot meet the plain error standard. *Id.*

Additionally, any error is not plain if “this circuit’s law remains unsettled and the other federal circuits have reached divergent conclusions.” *United States v. Salinas*, 480 F.3d 750, 759 (5th Cir. 2007). The Third and Eighth Circuits have considered the constitutionality of § 922(g)(1) after *Bruen* and reached conflicting results. *See Range v. Att’y Gen.*, 69 F.4th 96, 98–99 (3d Cir. 2023) (en banc) (rejecting the Government’s argument that statements in *Heller*, *McDonald*, and *Bruen* seemingly approved of felon disarmament and holding that the defendant remained one of the people protected by the Second Amendment given his particular felony conviction and had a right to purchase a hunting rifle and shotgun for self-defense); *United States v. Cunningham*, 70 F.4th 502, 506 (8th Cir. 2023) (holding that “[t]he longstanding prohibition on possession of firearms by felons is constitutional”).

Given the absence of binding precedent holding that § 922(g)(1) is unconstitutional, and that it is unclear that *Bruen* dictates such a result, we have rejected plain-error challenges to § 922(g)(1) under *Bruen* in several unpublished opinions. *See, e.g., United States v. Roy*, No. 22-10677, 2023 WL 3073266 (5th Cir. Apr. 25, 2023) (unpublished), *cert. denied*, No. 23-5188, 2023 WL 6378839 (U.S. Oct. 2, 2023); *United States v. Hickcox*, No. 22-50365, 2023 WL 3075054 (5th Cir. Apr. 25, 2023) (unpublished), *cert. denied*, No. 23-5130, 2023 WL 6378730 (U.S. Oct. 2, 2023); *United States v. Pickett*, No. 22-11006, 2023 WL 3193281, 1 (5th Cir. May 2, 2023) (unpublished); *United States v. Smith*, No. 22-10795, 2023 WL 5814936 (5th Cir. Sept. 8,

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2023) (unpublished); *United States v. Racliff*, No. 22-10409, 2023 WL 5972049 (5th Cir. Sept. 14, 2023) (unpublished); *United States v. EtchisonBrown*, No. 22-10892, 2023 WL 7381451 (5th Cir. Nov. 7, 2023) (unpublished). The different conclusions reached by the Third and Eighth Circuits noted above further support the conclusion that this unsettled question is not clear or obvious error. *See Salinas*, 480 F.3d at 759. Accordingly, we conclude that Jones has failed to demonstrate that the district court's application of § 922(g)(1) constitutes plain error.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

DERRICK DURRELL JONES

Case Number: **3:19-CR-00446-L(1)**

USM Number: **60013-177**

Juan Gabriel Rodriguez

Defendant's Attorney

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	Guilty to Count 1 of the Indictment filed September 11, 2019
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

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

05/08/2019

Count

1

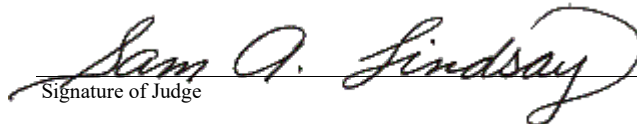
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
 Count(s) is are dismissed on the motion of the United States

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

February 21, 2023

Date of Imposition of Judgment


Signature of Judge

Sam A. Lindsay, United States District Judge

Name and Title of Judge

February 23, 2023

Date

DEFENDANT: DERRICK DURRELL JONES
CASE NUMBER: 3:19-CR-00446-L(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Thirty (30) months as to Count 1. This sentence shall run concurrently with any sentences imposed in Case Nos. F-1941013, pending in the 291st Judicial District Court and MB1941450, pending in the Dallas County Criminal Court 4. This sentence shall run consecutively to any sentence imposed in Case No. MB2161069, pending in the Dallas County Criminal Court 4.**

The court makes the following recommendations to the Bureau of Prisons:
The court recommends that Defendant be allowed to serve his sentence at FCI Seagoville and that he be allowed to participate in the Residential Drug Abuse Treatment Program, if he is eligible.

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

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

at a.m. p.m. on

as notified by the United States Marshal.

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

before 2 p.m. on

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DERRICK DURRELL JONES
CASE NUMBER: 3:19-CR-00446-L(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: DERRICK DURRELL JONES
CASE NUMBER: 3:19-CR-00446-L(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: DERRICK DURRELL JONES
CASE NUMBER: 3:19-CR-00446-L(1)

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DERRICK DURRELL JONES
CASE NUMBER: 3:19-CR-00446-L(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant’s ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payments of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant’s ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons’ Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant’s interest in the following property to the United States:

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

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff,	§	
v.	§	3:19-CR-446-L
	§	
DERRICK DURRELL JONES,	§	ECF
Defendant.	§	

ELEMENTS AND PUNISHMENT OF THE OFFENSE AND FACTUAL RESUME¹

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

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

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

ELEMENTS OF THE OFFENSE

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

1. Mr. Jones knowingly possessed³ a firearm. The term “firearm” means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion;
2. Before Mr. Jones possessed the firearm, a court of law convicted him of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense;
3. Mr. Jones knew that at the time he possessed the firearm that he had previously been convicted of a felony offense—he knew that he was a felon at the time he possessed the firearm;⁴ and
4. The possession of the firearm was in or affected interstate commerce; that is, at some time before Mr. Jones possessed the firearm, it had traveled from one State or Country to another.

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

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

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

PUNISHMENT FOR THE OFFENSE

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

1. imprisonment for a period not to exceed ten years;
2. a fine not to exceed two-hundred-fifty-thousand dollars, or twice any pecuniary gain to Mr. Jones or loss to the victim(s);
3. the sentencing court may impose a term of supervised release not to exceed three years; if Mr. Jones violates the conditions of supervised release, he could be imprisoned for up to a total of three years, but for no more than two years at one time;
4. a mandatory special assessment of one-hundred dollars;
5. restitution to victims or to the community; and
6. costs of incarceration and supervision.

SENTENCING IN THIS CASE

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

Mr. Jones further understands that the offense of “Felon-in-Possession-of-a-Firearm” is a felony and conviction for such a felony will deprive him of important constitutional and civil rights, which include, *inter alia*, the right to vote, the right to hold public office, the right to sit on a jury, and the right to actually or constructively possess a firearm.

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

CONSTITUTIONAL RIGHTS AND WAIVER OF THOSE RIGHTS

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

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

STIPULATED FACTS

Mr. Jones admits that on or about May 8, 2019, in the Dallas Division of the Northern District of Texas, after having been previously convicted of a crime punishable by imprisonment for a term exceeding one year — Mr. Jones knew that he was a felon well before the date that he possessed the firearm — he knowingly and unlawfully possessed a firearm and that the firearm that he possessed had previously been shipped and transported in interstate and foreign commerce.

Specifically, Mr. Jones admits and agrees that (1) he knowingly possessed a Lorcin, .380 caliber pistol, bearing serial number 263480; (2) the aforementioned Lorcin, .380 caliber pistol qualifies as a “firearm;” (3) before he possessed the aforementioned firearm he had previously been convicted of a felony; (4) he knew he qualified as a “felon” and was a felon at the time he possessed the aforementioned pistol; and (5) the aforementioned firearm was manufactured outside of the State of Texas and it traveled to Texas. This conduct violates 18 U.S.C. § 922(g)(1).

VOLUNTARINESS OF THE PLEA OF GUILTY

Mr. Jones has thoroughly reviewed his constitutional rights, the facts of his case, the elements of the offense of conviction, the statutory penalties, and the Sentencing Guidelines⁶ and § 3553(a) with his attorney. Mr. Jones has received satisfactory explanations regarding every aspect of this document and the alternatives to signing this document, and he is satisfied with his

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

⁶ Though undersigned counsel and Mr. Jones have discussed how the applicable chapters of the Federal Sentencing Guidelines will apply to Mr. Jones, and undersigned counsel and Mr. Jones have discussed the potential guideline range in his case, Mr. Jones understands that the conversations were about potential punishments and not a guarantee of what the punishment will be. Mr. Jones understands that only the district judge in his case will make that decision and that the decision will only be made at the sentencing hearing after the district judge has heard all of the evidence and arguments in his case.

attorney's representation of him. Mr. Jones concedes that he is guilty of Count One of the one-count Indictment, and he concludes that it is in his best interests to plead guilty.

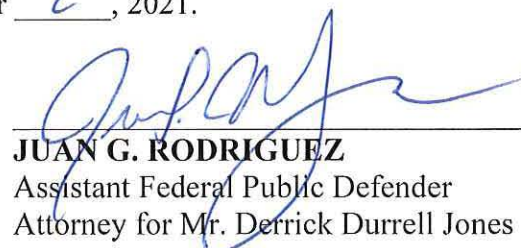
RIGHT TO APPEAL

Mr. Jones understands that he has retained all of his rights to appeal and that he has the ability and right to file a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit. Knowing this, Mr. Jones understands that if he wants to appeal either his sentence or his conviction he will have to file a Notice of Appeal within 14 days of the date that the Judgment in his case is filed. **Mr. Jones agrees that within 14 days of the filing of the Judgment he will personally write to the United States Clerk for the Northern District of Texas at the Office of the United States District Clerk, Northern District of Texas, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242, and request that the Clerk file a Notice of Appeal.** Mr. Jones further understands and agrees that within 14 days of the date that the Judgment is filed he will contact the Office of the Federal Public Defender, Northern District of Texas, Dallas Division, and request that a Notice of Appeal be filed in his case. Mr. Jones understands that typically the appeal will not cost him any money, unless the district court orders that he pay some amount of money, and that, unless otherwise ordered, the Office of the Federal Public Defender will write and file the appeal on his behalf.

AGREE TO AND SIGNED this December 2, 2021.



DERRICK DURRELL JONES
Defendant



JUAN G. RODRIGUEZ
Assistant Federal Public Defender
Attorney for Mr. Derrick Durrell Jones