

No. 25-5343

IN THE
Supreme Court of the United States

KENDRICK JARRELL BEAIRD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: AUGUST 11, 2025
CERTIORARI GRANTED: APRIL 20, 2026

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed: May 15, 2025]

No. 24-10764
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
KENDRICK JARRELL BEAIRD,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CR-28-1

Before RICHMAN, GRAVES, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Kendrick Jarrell Beaird pleaded guilty to possession of a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1) and was sentenced to 72 months of imprisonment and three years of supervised release. He now appeals his conviction on various grounds. The Government has filed an opposed motion for summary affirmance or, alternatively, for an extension of time in which to file a brief.

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

First, Beaird cannot show on plain error review that § 922(g)(1) is unconstitutional as applied to him because he was previously convicted of a felony. *See United States v. Cisneros*, 130 F.4th 472, 477 (5th Cir. 2025) (per curiam). His alternative request that we should remand this case for the district court to reconsider this question in light of *United States v. Rahimi*, 602 U.S. 680 (2024), and *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), *petition for cert. filed* (U.S. Feb. 18, 2025) (No. 24-6625), is therefore denied. *See Cisneros*, 130 F.4th at 477.

Second, Beaird correctly recognizes that his facial challenge to § 922(g)(1) is foreclosed by *Diaz*, 116 F.4th at 471-72. *See Cisneros*, 130 F.4th at 477. Next, Beaird's arguments that § 922(g)(1) is unconstitutional under the Commerce Clause are foreclosed. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Fourth, Beaird rightly concedes that his argument that the district court erred in relying on the Guidelines commentary to conclude that a 17-round magazine qualified as a "large capacity magazine" for the purposes of the enhancement under U.S.S.G. § 2K2.1(a)(3) is foreclosed. *See United States v. Martin*, 119 F.4th 410, 414-15 (5th Cir. 2024), *cert. denied*, ___ U.S. ___, 2025 WL 889259 (2025). Finally, Beaird is correct that his argument that the district court erred in finding that Texas aggravated assault was a crime of violence under U.S.S.G. § 2K2.1(a)(3) is foreclosed. *See United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007); *United States v. Shepherd*, 848 F.3d 425, 427-28 (5th Cir. 2017).

Accordingly, the Government's motions for summary affirmance and for an extension of time to file a brief are DENIED, and the judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Case Number: 3:23-CR-00028-S(01)
USM Number: 57774-510

UNITED STATES OF AMERICA

v.

KENDRICK JARRELL BEAIRD

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before the U.S. Magistrate Judge, which was accepted by the Court	Count 1 of the Indictment, filed January 24, 2023.
☐	pleaded nolo contendere to count(s) which was accepted by the Court	
☐	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) Possession of a Firearm by a
Convicted Felon

Offense Ended

10/26/2022

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.

August 16, 2024

Date of Imposition of Judgment

/s/ Karen Gren Scholer

Signature of Judge

KAREN GREN SCHOLER

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 20, 2024

Date of Signature

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

72 months. It is the Court's intent for the Defendant to receive a sentence adjustment to account for his time spent in custody beginning on October 26, 2022, that the BOP will not credit under 18 U.S.C. § 3585(b).

This sentence shall run consecutively to any sentence imposed in Case Nos. F-1858138 and F-1858139, pending revocations in the 291st Judicial District Court of Dallas County, which are unrelated to the instant offense.

This sentence shall run concurrently to any sentence imposed in Case No. F-2259377, pending in the 291st Judicial District Court of Dallas County, which is related to the instant federal offense.

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

The Court recommends that Defendant be allowed to serve his sentence as close to the Dallas-Fort Worth area as possible to be near family. Further, the Court recommends that the Defendant be allowed to participate in the Residential Drug Abuse Program (RDAP) and any mental health treatment offered by the Bureau of Prisons, if eligible.

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

- ☐ The Defendant shall surrender to the United States Marshal:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

DEPUTY UNITED STATES MARSHAL

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.

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

SPECIAL CONDITIONS OF SUPERVISION

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, contributing to the costs of services rendered (copayment) at the rate of at least \$10 per month.

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 \$10 per month.

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

* 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.

- ☐ The determination of restitution is deferred until . *An Amended Judgment in a Criminal Case (A0245C)* 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:
- ☐ the interest requirement is waived for the
☐ fine ☐ restitution
- ☐ the interest requirement for the
☐ fine ☐ restitution is modified as follows:

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.

[1] UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Case No. 3:23-cr-00028-S(1)

UNITED STATES OF AMERICA

vs.

KENDRICK JARRELL BEAIRD

TRANSCRIPT OF SENTENCING HEARING
HEARD BEFORE THE HONORABLE
KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE

AUGUST 16, 2024

[8] * * *

THE COURT: And that motion is granted.

Okay. Turning to the Defendant's objections and clarifications, ECF Number 40. The Government responded in ECF Number 41. There was a Defendant's reply to the objections, ECF Number 44. And, of course, Probation filed its addendum addressing these objections.

So, first, I'm going to tell you – ask you, Ms. Morgan, are these two objections which, you know, everybody has responded to, are they live objections or any withdrawn?

MS. MORGAN: Your Honor, I think Objections 1 and 2 at [9] this point are – are just for the purposes of...

THE COURT: Preserving on appeal?

MS. MORGAN: Yes, Your Honor.

THE COURT: Okay. Do you agree with me that with respect to the clarifications, which are found on Page 3 of the objections, they – I believe they’ve all been accepted by Probation. They do not affect the guidelines and as far as today is concerned, they’re moot, am I right?

MS. MORGAN: Yes, Your Honor.

THE COURT: Okay. Let’s turn to Objection Number 1. Anything further you want to add to – other than what you have filed with the Court and your statement to me that you’re preserving for purposes of an appeal?

MS. MORGAN: Nothing further, Your Honor.

THE COURT: Same with two?

MS. MORGAN: Correct.

THE COURT: Okay. Anything further other than what was filed by the Government?

MS. JONES: No, Your Honor.

THE COURT: Okay. Those objections – well, let’s just start one at a time.

Objection Number 1 is overruled. The Government does cite some very recent Fifth Circuit cases concerning the same statute and the definition of violent crime at issue here. That’s *United States v. Joiner* and [10] *United States v. Lujan*. I believe these are published, but they are instructive to me. And for – because of those cases and the reasons articulated by both the Government and Probation in their filings, the Court finds that Defendant’s prior conviction for aggravated assault against a public servant in Case Number F-1858139 does qualify, for

the purposes of sentencing, as a crime of violence under the guidelines.

As I said before, Objection Number 1, which is to PSR Paragraph 18, is overruled.

With respect to the Defendant's Objection Number 2, essentially objecting to the enhanced base level. Because Probation relied on the commentary to 2K2.1 and you're arguing no deference, Fifth Circuit ruling, again, fairly recently, in *Vargas*: Courts in the Fifth Circuit are required to apply *Stinson* deference and consider the commentary to the guidelines.

And as you, Ms. Morgan, acknowledges, her objection is foreclosed under *Vargas* at this time, and consistent with the Fifth Circuit's ruling in *Vargas*, I am required to apply *Stinson* deference and consider the commentary to the guidelines.

And because the commentary does not violate the statute or federal – the Constitution or a federal statute, nor is inconsistent with or plainly erroneous – or a plainly erroneous reading of the guideline, the Court defers to the [11] commentary in 2K2.1, and the objection is overruled.

Ms. Morgan, have I taken care of all your objections and clarifications?

MS. MORGAN: Well, Your Honor, there was a third objection to a criminal history point, and I believe all the parties agreed that it was properly taken. It doesn't affect the guideline.

THE COURT: Right. I noticed all that. So it's – it's all been taken care of and it's – it hasn't affected the guidelines. Am I right?

MS. MORGAN: Yes.

THE COURT: Okay. So to wrap up, all objections and clarifications are now taken care of?

MS. MORGAN: Yes, Your Honor.

THE COURT: Thank you.

You agree?

MS. JONES: Yes, Your Honor.

THE COURT: Okay. There being no further objections, the Court adopts as its final findings of fact the statement and guideline applications in the Presentence Investigation Report and addendum, subject to, and including, any findings made by the Court in this hearing.

The guideline range is as follows: Total Offense Level 19; Criminal History Category 6; imprisonment range, 63 to 78 months; supervised release range, one to three [12] years; fine range, \$10,00 to \$100,000; plus cost of imprisonment and supervision.

* * *

[27] * * *

THE COURT: Okay. Thank you.

I will now state the full sentence determined after consideration of all the factors set out in Title 18 U.S.C. Section 3553(a), including especially, as I've stated, the advisory sentencing guidelines issued by the Sentencing Commission and the conduct admitted by the Defendant in his Factual Résumé.

It is the judgment of the Court that the Defendant Kendrick Jarrell Beaird in 3:23-cr-00028-S(1) is hereby committed to the custody of the Federal Bureau of Prisons for a period of 72 months.

The Court also orders the federal sentence to run consecutive to any imprisonment sentence that may be imposed under Case Numbers F-1858138 and F-1858139, which are pending revocations in the 291st Judicial District Court of Dallas County as these revocation proceedings are not related to the instant offense.

[28] The Court orders the federal sentence to run concurrently with any imprisonment sentence that may be imposed in Case Number F-2259377, which is pending in the 291st Judicial District Court of Dallas County because that pending charge is related to the instant federal offense.

The Court does not order a fine because the Defendant does not have the financial resources or future earning capacity to pay a fine.

Restitution is not applicable in this case.

It is ordered that upon release from imprisonment, the Defendant shall be placed on supervised release for a term of three years. The Court adopts the terms of supervision set forth in Miscellaneous Order Number 64 and outlined in Part G of the Presentence Investigation Report except as modified or supplemented by any facts in the addendum or any that I may have found during this sentencing hearing. The Defendant shall comply with these conditions during the term of supervision.

It is further ordered the Defendant shall pay a special assessment in the amount of \$100.

In determining the sentence, the Court considered the advisory guidelines as well as the other statutory directives listed in 18 U.S.C. Section 3553(a). A sentence of 72 months is sufficient but not greater

than necessary to comply with the purposes set forth in Paragraph 2 [29] of 3553(a), which is reflect the seriousness of and provide just punishment for the offense, promote respect for the law, afford adequate deterrence to criminal conduct, and protect the public from further crimes of the Defendant.

The Court will state that those factors, which the Court has considered and given a lot of thought, weigh heavily in favor of a guideline sentence toward the top of the guideline range.

I have now stated the sentence and the reasons therefor. Any objections or reasons why the sentence should not be imposed as stated?

MS. JONES: None from the Government.

MS. MORGAN: None, Your Honor.

THE COURT: The sentence shall be imposed as stated.

And although I did not sentence at the top of the guideline, it's more toward the middle, I will say that, for the record, even if the guideline range was not calculated or applied correctly, I state that I would have imposed the same sentence for the reasons given during this sentencing hearing regardless of the applicable guideline range.

* * *