

No. _____

In the Supreme Court of the United States

ALEX ALVAREZ,

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**

PETITION FOR A WRIT OF CERTIORARI

Kevin Joel Page
Counsel of Record
FEDERAL PUBLIC
DEFENDER'S OFFICE
525 S. Griffin St.
Suite 629
Dallas, Texas 75202
(214) 767-2746
Joel_Page@fd.org
Counsel for Petitioner

September 2, 2025

QUESTIONS PRESENTED

Whether 18 U.S.C. §922(g)(1) comports with the Second Amendment as applied to a defendant with prior felony convictions for drug possession, publishing unauthorized intimate photos of another, and unauthorized use of a motor vehicle?

DIRECTLY RELATED PROCEEDINGS

United States v. Alex Alvarez, No. 4:24-CR-98 (N.D.
Tex. August 12, 2024)

United States v. Alex Alvarez, No. 24-10739 (5th Cir.
June 3, 2025)

TABLE OF CONTENTS

Questions Presented.....	i
Directly Related Proceedings	ii
Table of Authorities.....	iv
Opinions Below	1
Jurisdiction	1
provisions Involved.....	1
Statement	2
A. Facts and Proceedings in District Court	2
B. Appellate Proceedings	3
Reasons for Granting the Petition	5
I. This Court should grant certiorari in this case to resolve the profound uncertainty, including an acknowledged circuit split, regarding the constitutionality of 18 U.S.C. §922(g)(1) under the Second Amendment.....	5
Conclusion.....	13
 Petition Appendix	
Fifth Circuit Opinion.....	1a
Judgment and Sentence of District Court	3a

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Atkinson v. Garland</i> , 70 F.4th 1018 (7th Cir. 2023)	8
<i>Kanter v. Barr</i> , 919 F.3d 437 (7th Cir. 2019), <i>abrogated</i> <i>by New York State Rifle & Pistol Ass'n</i> , <i>Inc. v. Bruen</i> , 597 U.S. 1 (2022)	10
<i>Morissette v. United States</i> , 342 U.S. 246 (1952)	12
<i>New York State Rifle & Pistol Ass'n, Inc. v.</i> <i>Bruen</i> , 597 U.S. 1 (2022)	5, 7
<i>Pitsilides v. Barr</i> , 128 F.4th 203 (3d Cir. 2025)	8
<i>Range v. Att'y Gen.</i> , 124 F.4th 218 (3d Cir. 2024)(en banc)	6, 7, 8, 9
<i>United States v. Diaz</i> , 116 F.4th 458 (5th Cir. 2024)	7, 10
<i>United States v. Duarte</i> , 101 F.4th 657 (9th Cir. 2024), <i>reh'g en</i> <i>banc granted, opinion vacated</i> , 108 F.4th 786 (9th Cir. 2024)	6

<i>United States v. Duarte</i> , 137 F.4 th 743 (9th Cir. May 9, 2025)(en banc).....	6, 7, 8, 9
<i>United States v. Gomez</i> , 773 F.Supp.3d 257 (N.D. TX March 25, 2025)	7
<i>United States v. Kimble</i> , No. 23-50874, 2025 WL 1793832 (5th Cir. June 30, 2025)	8
<i>United States v. Rodriguez</i> , 711 F.3d 541 (5th Cir. 2013)(en banc)	11
<i>United States v. Schnur</i> , 132 F.4 th 863 (5th Cir. 2025)	9
<i>United States v. Trinder</i> , D.C., 1 F.Supp. 659 (D. Mont. 1932)	12
<i>United States v. Williams</i> , 113 F.4 th 637 (6th Cir. 2024)	7, 8
<i>Vincent v. Bondi</i> , 127 F.4 th 1263 (10th Cir. 2025).....	7
State Cases	
<i>Avery v. Everett</i> , 110 N.Y. 317, 18 N.E. 148 (1888)	10
<i>Bowles v. Habermann</i> , 95 N.Y. 246, 247 (1884))	11

<i>Cannon v. Windsor</i> , 1 Houst. 143, 6 Del. 143 (1855).....	10
<i>Com. v. Kneeland</i> , 37 Mass. 206 (1838).....	11
<i>Com. v. Morris</i> , 3 Va. 176 (Va. Gen. Ct. 1811)	12
<i>In re Estate of Nerac</i> , 35 Cal. 392 (1868).....	11
<i>Frazer v. Fulcher</i> , 17 Ohio 260 (1848)	10
<i>Platner v. Sherwood</i> , 6 Johns. Ch. 118 (N.Y. Ch. 1822).....	10
<i>Ruffin v. Commonwealth</i> , 62 Va. 790 (1871).....	11
<i>State v. Davis</i> , 38 N.J.L. 176 (N.J. 1875)	12
Federal Statutes	
18 U.S.C. § 922(g)(1).....	1-8, 10
18 U.S.C. § 3553	3
28 U.S.C. § 1254(1)	1
State Statutes	
1 Conn. Pub. Stat. Laws 355 (1808)	11

Alaska Stat. § 11.61.200(a)(1)	9
Alaska Stat. § (b)(1)-(3)	9
Ariz. Rev. Stat. Ann. § 13-904(A).....	9
Ariz. Rev. Stat. Ann. § 13-904(B).....	9
Cal. Penal § 12021	9
Cal. Penal § 4852.17	9
Col. Rev. Stat. § 18-12-108	9
Laws of N.H. (1792).....	10
N.J. Rev. Laws 211 (1800).....	12
Tex. Penal Code § 31.07	12
Rules	
S. Ct. R. 13.1	1
S. Ct. R. 13.3	1
Constitutional Provisions	
U.S. Const. amend. II	2, 3, 4, 5, 9
Other Authorities	
David T. Courtright, <i>A Century of American Narcotics Policy, in Treating Drug Problems</i> (1992).....	11

Initial Brief in <i>United States v. Alvarez</i> , No. 24-10739, 2024 WL 5152947at (5th Cir. Filed December 10, 2024)	3, 4
Reply in Support of Certiorari in No. 11-159, <i>Astrue v. Capato</i> , 2011 WL 5098759 (Filed October 26, 2011)	13
Supplemental Brief for the Federal Parties in Nos. 23-374, <i>Garland v. Range</i> 23-683 (June 24, 2024)	5, 7
U.S. Sent'g Comm'n, <i>Quick Facts</i> , 18 U.S.C. § 922(g) <i>Firearms Offenses</i>	9
Wayne R. LaFave, <i>Criminal Law</i> , § 2.1(b) (5th ed. 2010).....	11

In the Supreme Court of the United States

No. _____

ALEX ALVAREZ,

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***

PETITION FOR A WRIT OF CERTIORARI

Alex Alvarez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion below was not selected for publication. It is reprinted on pages 1a–2a of the Appendix. The district court did not issue any written opinions.

JURISDICTION

The Fifth Circuit entered judgment on June 3, 2025. This petition is timely under S. Ct. R. 13.1 & 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Section 922(g)(1) of Title 18 reads in relevant part:

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

The Second Amendment provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

STATEMENT

A. Facts and Proceedings in District Court

On February 28, 2024, Petitioner Alex Alvarez peaceably submitted to arrest under warrant. *See* (Record in the Court of Appeals, at 9). He had a 9MM firearm on his person. *See* (Record in the Court of Appeals, at 9). Because Mr. Alvarez had been previously convicted of several felonies, the government charged him by Information with violating 18 U.S.C. §922(g)(1), which prohibits the possession of firearms by a person previously convicted of a crime punishable

by more than a year of imprisonment. *See* (Record in the Court of Appeals, at 19). He pleaded guilty. *See* (Record in the Court of Appeals, at 23-24).

A Presentence Report identified four prior felony convictions: possession of less than a gram of methamphetamine (twice), *see* (Record in the Court of Appeals, at 125, 127, ¶¶34, 37), publishing intimate visual material of another, *see* (Record in the Court of Appeals, at 126, ¶36), and unauthorized use of a motor vehicle, *see* (Record in the Court of Appeals, at 127, ¶38). It also detailed a collection of juvenile adjudications for theft, burglary, robbery, failure to identify, and evading arrest, *see* (Record in the Court of Appeals, at 121-125), and misdemeanor convictions for theft and assault, *see* (Record in the Court of Appeals, at 125-127).

At sentencing, the court imposed punishment one month above the low-end of the applicable Guideline range, or 25 months imprisonment. *See* (Record in the Court of Appeals, at 103-107).¹

B. Appellate Proceedings

On appeal, Petitioner contended that the District Court had plainly erred in entering a conviction because 18 U.S.C. §922(g)(1) violates the Second Amendment facially and as applied to him. *See* Initial Brief in *United States v. Alvarez*, No. 24-10739, 2024 WL 5152947 at **4-14 (5th Cir. Filed December 10, 2024) (“Initial Brief”). He noted that none of his prior

¹ However, it said the statement of reasons that “[e]ven if the guideline calculations are not correct, this is the sentence the Court would otherwise impose under 18 U.S.C. § 3553.” (Record in the Court of Appeals, at 153).

felony convictions would have been treated as felonies at founding, and accordingly would not have been punished with anything entailing or approximating complete disarmament. *See* Initial Brief, at **12-14. And he observed that Congress had never made any effort to disarm felons until the 20th Century, well after Founding. *See id.* at *10, n.2. He thus contended, in the alternative, that the defendant's prior convictions could not make §922(g)(1) constitutional no matter what they were. *See id.*

The Fifth Circuit rejected the Second Amendment challenge with this limited commentary:

[Mr. Alvarez] argues that his statute of conviction, 18 U.S.C. § 922(g)(1), violates the Second Amendment as applied to him in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and *United States v. Diaz*, 116 F.4th 458 (5th Cir. 2024), petition for cert. filed (U.S. Feb. 24, 2025) (No. 24-6625).[Footnote 1]

His unpreserved as-applied challenge fails on plain error review because he has not shown that applying § 922(g)(1) based on his prior felonies amounts to clear or obvious error. *See United States v. Cisneros*, 130 F.4th 472, 476–77 (5th Cir. 2025).

FN. 1

Alvarez contends in the alternative that *Diaz* was wrongly decided and that § 922(g)(1) is facially unconstitutional.

This argument is foreclosed. *See Diaz*,
116 F.4th at 471–72.

Pet.App. 1a-2a; *United States v. Alvarez*, No. 24-10739, 2025 WL 1564793, at *1 (5th Cir. June 3, 2025)

REASONS FOR GRANTING THE PETITION

I. This Court should grant certiorari in this case to resolve the profound uncertainty, including an acknowledged circuit split, regarding the constitutionality of 18 U.S.C. §922(g)(1) under the Second Amendment.

A. The courts of appeals are divided.

In *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court held that when a firearm restriction contravenes the text of the Second Amendment, it is valid only to the extent that it is consistent with the nation’s history and tradition of valid firearm regulation. *Bruen*, 597 U.S. at 19. It rejected the notion that firearm regulations may be affirmed based on a sufficiently compelling governmental interest. *Id.*

Section 922(g)(1) of Title 18 forbids the possession of firearms by most persons convicted of an offense punishable by more than a year’s imprisonment. Since *Bruen*, “Section 922(g)(1)’s constitutionality has divided courts of appeals and district courts.” Supplemental Brief for the Federal Parties in Nos. 23-374, *Garland v. Range* 23-683, at 2 (June 24, 2024)(“Supplemental Brief in Range”), available at https://www.supremecourt.gov/DocketPDF/23/23-374/315629/20240624205559866_23-

374%20Supp%20Brief.pdf , last visited August 26, 2025). As the Ninth Circuit observed en banc, “[f]our circuits have upheld the categorical application of § 922(g)(1) to all felons.” *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. May 9, 2025)(en banc)(citing *United States v. Hunt*, 123 F.4th 697, 707–08 (4th Cir. 2024); *United States v. Jackson*, 110 F.4th 1120, 1129 (8th Cir. 2024); *Vincent v. Bondi*, 127 F.4th 1263, 1265–66 (10th Cir. 2025), and *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted, judgment vacated*, 145 S.Ct. 1041 (2025)). The en banc Ninth Circuit joined this group in a decision that produced four separate opinions, including a partial dissent. *Duarte*, 137 F.4th at 762. In so doing, it overruled a panel opinion that had found the statute unconstitutional as applied to a person with prior convictions for vandalism, drug possession, and evading arrest. See *United States v. Duarte*, 101 F.4th 657, 661 (9th Cir. 2024), *reh’g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *different results on rehearing* 137 F.4th at 747 (9th Cir. May 9, 2025)(en banc). This brings the total number of courts rejecting all constitutional challenges to the statute to five.

But as the en banc Ninth Circuit court also recognized, two more Circuits, including the court below, “have left open the possibility that § 922(g)(1) might be unconstitutional as applied to at least some felons,” *Id.* (citing *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024), and *United States v. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024))(emphasis in original), while the en banc Third Circuit has actually held the statute unconstitutional as applied to a man with a prior felony conviction for making a false statement to obtain food stamps, *Range v. Att’y Gen.*,

124 F.4th 218, 222–23 (3d Cir. 2024)(en banc). Many District Courts, though not the majority, have also found the statute unconstitutional in individual cases. *See* Supplemental Brief in *Range*, at *4-5, nn.1-3 (collecting cases); *see also United States v. Gomez*, 773 F.Supp.3d 257 (N.D. TX March 25, 2025)(marijuana possession), *appeal pending*. As the government observed last year, moreover, “[s]ome of those decisions have involved felons with convictions for violent crimes, such as murder, manslaughter, armed robbery, and carjacking.” *Id.* at **4-5, & n.1.

Further, the Courts of Appeals have acknowledged extensive disagreement and uncertainty regarding certain methodological issues relevant to the resolution of *Bruen* challenges. These include the relevance of laws at founding that did not directly regulate firearms, such as capital punishment and estate forfeiture, *compare Range*, 124 F.4th at 231 (capital punishment and estate forfeiture for non-violent crime not relevant), *with Diaz*, 116 F.4th at 469-470 (giving dispositive weight to the availability of capital punishment for crimes analogous to the defendant’s prior conviction); the status of pre-*Bruen* circuit precedent, *compare Vincent*, 127 F.4th at 1265–66 (circuit precedent unaffected, and collecting cases), *with Williams*, 113 F.4th at 648 (*Bruen* displaces earlier circuit precedent); the significance of *dicta* in *Heller*, *Bruen*, and *Rahimi* regarding “presumptively valid” restrictions on firearm ownership, *compare Duarte*, 137 F.4th at 750 (relying heavily on such passages to affirm §922(g)(1)) *with Diaz*, 116 F.4th at 465-466 (declining to give them controlling weight); and the propriety of inquiring into the defendant’s conduct not been substantiated by a criminal

conviction; *compare United States v. Kimble*, No. 23-50874, 2025 WL 1793832, at *8 (5th Cir. June 30, 2025)(improper) *with Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025)(proper). And Circuit opinions resolving challenges to §922(g)(1) frequently generate dissenting and concurring opinions, attesting to the pervasive uncertainty and disagreement in the area. *See Range*, 124 F.4th at 221 (six opinions, one dissent); *Duarte*, 137 F.4th at 745 (four opinions, one partial dissent)(reversing panel); *Williams*, 113 F.4th at 642 (concurring opinion from Judge concurring only in judgment in panel decision); *Atkinson v. Garland*, 70 F.4th 1018, 1019 (7th Cir. 2023)(dissent from panel decision).

B. This Court should resolve the uncertainty regarding the constitutional status of 18 U.S.C. §922(g)(1).

The issue merits intervention by this Court. There is a clear and acknowledged circuit split on the constitutionality of a federal statute. At least seven Circuits have weighed in, and there is relative balance as between those maintaining that the statute is always constitutional, on the one hand, and those acknowledging its constitutional vulnerabilities, on the other. The split will therefore not resolve spontaneously. And as can be seen above, a substantial volume of lower court opinions provide an ample resource to assist this Court in the resolution of the matter.

The matter is profoundly weighty. Two Circuits (the Third and Ninth) have dealt with the issue en banc, demonstrating that it meets the standards for discretionary review. And these two en banc

treatments of the issue drew nine amici, further attesting to its importance. *See Range*, 124 F.4th at 221; *Duarte*, 137 F.4th at 745. More than 6,000 people suffered conviction for violating this statute in Fiscal Year 2024 alone, almost all of whom went to prison. United States Sentencing Commission, *Quick Facts, 18 U.S.C. §922(g) Firearms Offenses*, at 1, last visited August 26, 2025, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY24.pdf. And of course most states have comparable statutes, which means that the true number of persons incarcerated each year for possessing a firearm after a felony conviction may be many times this number. *See e.g.* Alaska Stat. § 11.61.200(a)(1), (b)(1)-(3); Ariz. Rev. Stat. Ann. §§ 13-904(A), (B); 13-905; 13-906; Cal. Penal §§ 12021, 4852.17; Col. Rev. Stat. § 18-12-108.

The lack of clear answers about the constitutionality of this statute (and its state analogues) is intolerable for many reasons. First, there is a strong possibility that substantial numbers of Americans are in prison, and that more will go to prison, for the exercise of a fundamental constitutional right. That should be anathema in a free constitutional republic. Second, and conversely, the lack of clarity as to the scope of the Second Amendment right to own a firearm after a felony conviction may deter lawful prosecutions of criminal activity, jeopardizing public safety. Third, this lack of clarity may deter constitutionally protected conduct, or encourage reliance on mistaken beliefs about the scope of a constitutional right, resulting in illegal conduct and imprisonment. *See United States v.*

Schnur, 132 F.4th 863, 871 (5th Cir. 2025)(Higginson, J., concurring)(expressing concern about the notice problems that flow from uncertainty regarding the constitutional status of §922(g)(1)).

C. This case well presents the issue.

The present case is an apt vehicle to resolve the uncertainty. Petitioner’s challenge could well be resolved in his favor. It remains the case that “at least thus far, scholars have not been able to identify any [] laws,” from founding “explicitly imposing—or explicitly authorizing the legislature to” “permanently dispossess all felons” of their firearms. *Kanter v. Barr*, 919 F.3d 437, 454 (7th Cir. 2019), *abrogated by New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022)(Barrett, J., dissenting). The court below has reasoned that because serious felonies could be punished with estate forfeiture or the death penalty at founding, it follows that the lesser penalty of lifelong disarmament would also have been valid at founding. *See Diaz*, 116 F.3d at 469. This reasoning is dubious, for “[t]he obvious point that the dead enjoy no rights does not tell us what the founding-era generation would have understood about the rights of felons who lived, discharged their sentences, and returned to society.” *Kanter*, 919 F.3d at 462 (Barrett, J., dissenting). Indeed, cases adjudicating the rights of unexecuted felons often found, on one theory or another, that their civil rights, including property rights, were restored after prison. *See id.* at 460-461 (citing *Platner v. Sherwood*, 6 Johns. Ch. 118, 122 (N.Y. Ch. 1822); *Frazer v. Fulcher*, 17 Ohio 260, 262 (1848); .”); *Cannon v. Windsor*, 1 Houst. 143, 144, 6 Del. 143 (1855);); *Avery v. Everett*, 110 N.Y. 317, 18

N.E. 148, 154-155 (1888); *In re Estate of Nerac*, 35 Cal. 392, 396 (1868); *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871; *Bowles v. Habermann*, 95 N.Y. 246, 247 (1884)).

But in any case, Petitioner’s prior felony convictions likely would not have triggered capital punishment at founding, even theoretically. Petitioner suffered two prior convictions for possession of a controlled substance. *See* (Record in the Court of Appeals, at 125, 127, ¶¶34, 38). At founding, possession of essentially any drug at all would not have been criminal, much less capital. *See* David T. Courtright, *A Century of American Narcotics Policy, in Treating Drug Problems* at 1 (1992)(explaining that until roughly 100 years ago, “there was virtually no effective regulation of narcotics in the United States.”).

The defendant’s conviction for publishing intimate pictures of another, *see* (Record in the Court of Appeals, at 126, ¶36), might be analogized to libel or, with some imagination, blasphemy. But those were not capital at founding either. *See United States v. Rodriguez*, 711 F.3d 541, 558 (5th Cir. 2013)(en banc)(noting that libel was a misdemeanor at common law)(citing Wayne R. LaFave, *Criminal Law*, § 2.1(b) (5th ed. 2010)), *abrogated on other grounds by Esquivel-Quintana v. Sessions*, 581 U.S. 385 (2017); 1 Conn. Pub. Stat. Laws 355 (1808)(authorizing whipping for blasphemy); *Com. v. Kneeland*, 37 Mass. 206, 207 (1838)(reflecting a punishment of three-months imprisonment for blasphemy and profanity); Laws of N.H. 253 (1792) (authorizing fine of 40 shillings and/or three hours in the docks for libel);

N.J. Rev. Laws 211 (1800)(authorizing corporal punishment and year's imprisonment for public lewdness); *Com. v. Morris*, 3 Va. 176, 181 (Va. Gen. Ct. 1811)(suggesting that offenders suffered punishment by fine for libel).

Finally, there is Petitioner's conviction for unauthorized use of a motor vehicle, *see* (Record in the Court of Appeals, at 127, ¶38), which does not require an intent to permanently deprive the victim of property, *see* Tex. Penal Code §31.07. Until modern theft statutes liberalized the elements of larceny, a defendant who stole property fully intending to return it would evade felony liability for larceny. *See State v. Davis*, 38 N.J.L. 176, 179-180 (N.J. 1875)(recounting *Phillips & Strong's case*, 2 East P. C., ch. 16, 98, and *Rex v. Crump*, 1 Car. & P. 658, (11 E. C. L.), in which a larceny conviction was reversed and in which a larceny defendant was found not guilty, respectively, because the defendant's intent to deprive horse-owner of the horse was only temporary); *see also Morissette v. United States*, 342 U.S. 246, 270, n. 28 (1952)(reciting the facts and outcome of *United States v. Trinder*, D.C., 1 F.Supp. 659 (D. Mont. 1932), in which defendants guilty of "joyriding" suffered punishment only for trespass rather than larceny, carrying forward the common-law rule even into federal statute operative in 1932).

Regrettably, the issue is not preserved in District Court. But as the government has noted, the "possibility that [petitioner] might ultimately be denied [relief] on another ground would not prevent the Court from addressing [the question presented]. Indeed, the Court frequently considers cases that have

been decided on one ground by a court of appeals, leaving other issues to be decided on remand, if necessary.” Reply in Support of Certiorari in No. 11-159, *Astrue v. Capato*, 2011 WL 5098759, at *11 (Filed October 26, 2011).

CONCLUSION

This Court should grant the petition and set this case for a decision on the merits.

Respectfully submitted,

/s/ Kevin Joel Page
Kevin Joel Page
Counsel of Record
FEDERAL PUBLIC
DEFENDER’S OFFICE
525 S. Griffin St.
Suite 629
Dallas, Texas 75202
(214) 767-2746
Joel_Page@fd.org

September 2, 2025

United States Court of Appeals for the Fifth Circuit

No. 24-10739
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 3, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ALEX ALVAREZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CR-98-1

Before KING, SOUTHWICK, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Alex Alvarez pleaded guilty to possessing a firearm as a convicted felon and was sentenced to 25 months of imprisonment with two years of supervised release. On appeal, he argues that his statute of conviction, 18 U.S.C. § 922(g)(1), violates the Second Amendment as applied to him in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), and

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

No. 24-10739

United States v. Diaz, 116 F.4th 458 (5th Cir. 2024), *petition for cert. filed* (U.S. Feb. 24, 2025) (No. 24-6625).¹

His unpreserved as-applied challenge fails on plain error review because he has not shown that applying § 922(g)(1) based on his prior felonies amounts to clear or obvious error. *See United States v. Cisneros*, 130 F.4th 472, 476–77 (5th Cir. 2025).

AFFIRMED.

¹ Alvarez contends in the alternative that *Diaz* was wrongly decided and that § 922(g)(1) is facially unconstitutional. This argument is foreclosed. *See Diaz*, 116 F.4th at 471–72.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v. Case Number: 4:24-CR-00098-P(01)
U.S. Marshal's No.: 03055-511
ALEX ALVAREZ Frank Gatto, Assistant U.S. Attorney
Chris Weinbel, Attorney for the Defendant

On April 24, 2024 the defendant, ALEX ALVAREZ, entered a plea of guilty as to Count One of the Information filed on April 18, 2024. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Illegal Possession of a Firearm by a Prohibited Person	February 2024	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on April 18, 2024.

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 August 9, 2024.



MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed August 12, 2024.

Judgment in a Criminal Case
Defendant: ALEX ALVAREZ
Case Number: 4:24-CR-00098-P(1)

Page 2 of 5

IMPRISONMENT

The defendant, ALEX ALVAREZ, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Twenty-Five (25) months** as to Count One of the Information filed on April 18, 2024. This sentence shall run consecutively to any future sentences which may be imposed in Case Nos. 1815956D and 1816371D in Criminal District Court No. 1, Tarrant County, Texas, as these offenses are unrelated to the instant offense.

The Court recommends to the Bureau of Prisons that the defendant be able to participate in the Residential Drug Abuse Treatment Program, if eligible. The Court further recommends to the BOP that the defendant be incarcerated at a facility as close to the Dallas, Fort Worth, TX area as possible.

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 **Two (2) years** as to Count One of the Information filed on April 18, 2024.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame;
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed;
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer;
- 4) The defendant shall answer truthfully the questions asked by the probation officer;
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observed in plain view;

Judgment in a Criminal Case
Defendant: ALEX ALVAREZ
Case Number: 4:24-CR-00098-P(1)

Page 3 of 5

- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her employment (such as the position or the job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change;
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer;
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours;
- 10) The defendant shall 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) The defendant shall not act or make an 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk; and,
- 13) The defendant shall 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 possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

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

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;

Judgment in a Criminal Case
Defendant: ALEX ALVAREZ
Case Number: 4:24-CR-00098-P(1)

Page 4 of 5

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

participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered (copayment) at a rate of at least \$25 per month; and,

participate in an outpatient program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case
Defendant: ALEX ALVAREZ
Case Number: 4:24-CR-00098-P(1)

Page 5 of 5

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY
Deputy Marshal