

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

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TOMMY PHONTHALANGSY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

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/s/ Loui Itoh  
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Appendix A Opinion of Fifth Circuit, *United States v. Phonthalangsy*, No. 24-10485, 2025 WL 1833529 (5th Cir. July 3, 2025) (unpublished)

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered May 31, 2024.  
*United States v. Phonthalangsy*, Dist. Court No. 4:24-CR-00010-O

## APPENDIX A

# United States Court of Appeals for the Fifth Circuit

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No. 24-10485  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

July 3, 2025

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

TOMMY PHONTHALANGSY,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:24-CR-10-1

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Before HIGGINBOTHAM, JONES, and OLDHAM, *Circuit Judges*.

PER CURIAM:\*

Tommy Phonthalangsy pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1), and was sentenced within the guidelines range to 51 months in prison and to a three-year term of supervised release. Phonthalangsy appeals his conviction and his sentence.

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

No. 24-10485

On appeal, Phonthalangsy renews challenges that he presented in an unsuccessful motion to dismiss the indictment. He contends that § 922(g) 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). That argument, as Phonthalangsy acknowledges, is foreclosed by our decision in *United States v. Diaz*, 116 F.4th 458, 466-72 (5th Cir. 2024), *petition for cert. filed* (U.S. Feb. 18, 2025) (No. 24-6625). His claim that § 922(g)(1) violates the Commerce Clause similarly fails because, as he concedes, it is foreclosed by our caselaw. *See, e.g., United States v. Jones*, 88 F.4th 571, 573 (5th Cir. 2023), *cert. denied*, 144 S. Ct. 1081 (2024); *United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013).

Phonthalangsy also argues for the first time on appeal that the district court erred in finding that his prior conviction in Texas for murder qualified as a “crime of violence” that subjected him to a base offense level of 20 under U.S.S.G. § 2K2.1(a)(4)(A). However, he has not established that the district court’s determination was clear or obvious error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). His claim turns on various issues on which the law is uncertain and unresolved, and the issue whether Texas murder is a “crime of violence” thus is subject to reasonable dispute. *See United States v. Scott*, 821 F.3d 562, 570–71 (5th Cir. 2016); *United States v. Trejo*, 610 F.3d 308, 319 (5th Cir. 2010). Therefore, the district court did not plainly err. *See Puckett*, 556 U.S. at 135.

The judgment of the district court is AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**

NORTHERN DISTRICT OF TEXAS  
Fort Worth Division

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

v.

TOMMY PHONTHALANGSY

Case Number: 4:24-CR-00010-O(01)  
U.S. Marshal's No.: 94585-510  
Aisha Saleem, Assistant U.S. Attorney  
Joshua Smith Rhodes, Attorney for the Defendant

On February 7, 2024 the defendant, TOMMY PHONTHALANGSY, entered a plea of guilty as to Count One of the Indictment filed on January 10, 2024. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§922(g)(1) and 924(a)(8)	Possession of a Firearm by a Convicted Felon	11/03/2023	One

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on January 10, 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 May 31, 2024.

  
REED O'CONNOR  
U.S. DISTRICT JUDGE

Signed May 31, 2024.

Judgment in a Criminal Case  
Defendant: TOMMY PHONTHALANGSY  
Case Number: 4:24-CR-00010-O(1)

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### IMPRISONMENT

The defendant, TOMMY PHONTHALANGSY, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **FIFTY-ONE (51) MONTHS** as to Count One of the Indictment filed on January 10, 2024. This sentence shall run concurrently with any future sentence which may be imposed in Case Nos. 1803205D and 1803208D, pending in the 396<sup>th</sup> Judicial District Court, Tarrant County. This sentence shall run consecutively with any future sentence which may be imposed in Case No. Case No. 1775097D, pending in the 396<sup>th</sup> Judicial District Court, Tarrant County.

The Court makes a non-binding recommendation to the BOP that Defendant, if appropriately classified, be allowed to serve his term of imprisonment as near as geographically possible to an FCI facility in Fort Worth, Texas.

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

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) YEARS** as to Count One of the Indictment filed on January 10, 2024.

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



Judgment in a Criminal Case  
Defendant: TOMMY PHONTHALANGSY  
Case Number: 4:24-CR-00010-O(1)

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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.

In addition the defendant shall:

not commit another federal, state, or local crime;

not illegally possess controlled substances;

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

not possess a firearm, ammunition, destructive device, or any dangerous weapon;

refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court;

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

take notice that if this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment; and,

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

Judgment in a Criminal Case  
Defendant: TOMMY PHONTHALANGSY  
Case Number: 4:24-CR-00010-O(1)

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### **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.

### **FORFEITURE**

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a silver/black Taurus, Model G2C, 9-millimeter pistol, bearing Serial No. AEB072050.

### **RETURN**

I have executed this judgment as follows:

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

\_\_\_\_\_  
United States Marshal

BY \_\_\_\_\_  
Deputy Marshal