No. _____

In the

Supreme Court of the United States

_____

Antonio Montrail Anderson,

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

_____

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QUESTIONS PRESENTED

1. When does a record show "that the district court thought the sentence it chose was appropriate irrespective of the guidelines" within the meaning of *Molina-Martinez v. United States*, 578 U.S. 189, 198, 200 (2016)?

2. Does Anderson's 18 U.S.C. § 922(g)(1) conviction violate the Second Amendment?

3. May Congress criminalize intrastate firearm possession based solely on the fact that the firearm crossed state lines at some point before the defendant possessed it?

PARTIES TO THE PROCEEDING

Petitioner is Antonio Montrail Anderson, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

RELATED PROCEEDINGS

- *United States v. Anderson*, No. 4:24-CR-00137-P, U.S. District Court for the Northern District of Texas. Judgment entered on October 30, 2024.

- *United States v. Anderson*, No. 24-10976, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on July 29, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Antonio Montrail Anderson seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's unpublished opinion is available at *United States v. Anderson*, No. 24-10976, 2025 WL 2143700 (5th Cir. July 29, 2025). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence in *United States v. Anderson*, No. 4:24-CR-00137-P (N.D. Tex. Oct. 30, 2024), is reprinted in Appendix B.

JURISDICTION

The Fifth Circuit entered judgment on July 29, 2025. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Article I, Section 8 of the United States Constitution:

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

U.S. Const. art. I, § 8, cl. 3.

The Second Amendment to the United States Constitution:

> 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.

U.S. Const. amend. II.

Section 922(g)(1) of Title 18 provides 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.

18 U.S.C. § 922(g)(1).

Federal Rule of Criminal Procedure 52(b):

> **Plain Error.** A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

Fed. R. Crim. P. 52(b).

STATEMENT OF THE CASE

I. Facts and Proceedings in District Court

The government indicted Antonio Montrail Anderson for unlawful possession of a firearm as a felon, in violation of 18 U.S.C. § 922(g)(1). ROA.12-14. Anderson pleaded guilty without a plea agreement. ROA.130-31. Anderson admitted as part of his plea that the firearm he possessed "had traveled at some time from one state to another or between any part of the United States and any other country." ROA.35; *see also* ROA.137 (affirming "the facts stated" are "true and correct" at the guilty plea hearing). The admission did not specify when the firearm last traveled in commerce, or whether Anderson's conduct or even a commercial transaction caused the firearm's last movement in commerce. ROA.35.

In the Presentence Investigation Report ("PSR"), the probation officer recounted how law enforcement discovered the firearm in Anderson's vehicle after being dispatched "based on a report of a person with a weapon call." ROA.174. Anderson had gotten into a verbal altercation with a store clerk and, keeping "the firearm at his side and pointed downward during the confrontation," had threatened to kill the clerk. ROA.174. Anderson then left. ROA.174. When law enforcement arrested Anderson and searched his vehicle, they located, in addition to the firearm, "multiple plastic bags containing a total of .25 ounces of marijuana in the center console and his front pocket and a total of $8,233.75 in the vehicle and on his person." ROA.174.

The probation officer reported several prior convictions in Anderson's criminal history. ROA.176-83. These included, among others, a 2004 state conviction for burglary of a habitation, a 2005 state misdemeanor assault conviction, and a 2012 federal conviction for possessing with intent to distribute cocaine. ROA.178, 181-83. The factual recitation for the assault conviction reports that Anderson approached his then-girlfriend with a firearm and "fired a shot into the air," stating "'You think this is a game.'" ROA.181.

The probation officer applied U.S. Sent'g Comm'n, Guidelines Manual (Nov. 2023), and calculated a Total Offense Level 21 and Criminal History Category ("CHC") II, resulting in a guideline imprisonment range of 41–51 months. ROA.175, 193. The officer started with USSG §2K2.1(a)(4)(A) because of Anderson's 2012 federal cocaine-related conviction, which the officer classified as a "controlled substance offense." ROA.175.

At sentencing, the district court adopted the PSR's conclusions and guideline calculations. ROA.157-58. Anderson requested a bottom-of-the-guideline sentence, and the government waived argument. ROA.158-60. Immediately before pronouncing its sentence, the district court stated it determined the sentence after "consideration of all the factors set forth under Title 18 United States Code, Section 3553, including especially the advisory sentencing guidelines issued by the Sentencing Commission and the conduct that was admitted by Mr. Anderson in the factual resume that he signed." ROA.160. The court sentenced Anderson to 51 months of imprisonment and two years of supervised release. ROA.160-61. After imposing sentence, and contrary to its opening statement, the district court then claimed that "even if we didn't have these guideline calculations, I would have still imposed the same sentence under the facts and circumstances of the case." ROA.162. The court noted that Anderson had a prior federal felony, and that "there's evidence of his continued involvement in similar criminal conduct…." ROA.163. "He also has a history of violence to others and the continued possession of illegal drugs." ROA.163. "These all played a part in my decision," the court concluded. ROA.163.

In its statement of reasons, the court made no determinations or findings on a variance. ROA.202. Instead, the court classified the sentence as a guideline sentence, despite again claiming 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." ROA.201, 203.

II. Appellate Proceedings

In his appeal, Anderson raised four challenges: one to his sentence, and three to his conviction. As to his sentence, Anderson argued that the district court plainly erred by applying USSG §2K2.1(a)(4)(A) because the supposed predicate conviction was categorically overbroad. As to his conviction, Anderson made three arguments. First, he argued that precedent misinterpreted "in or affecting commerce" as stated in 18 U.S.C. § 922(g). Second, Anderson maintained that if precedent correctly interpreted the statute, then Congress exceeded its commerce power when it enacted § 922(g). Third, Anderson maintained that the district court plainly erred because his § 922(g)(1) conviction could not pass constitutional muster under the Second Amendment.

The Fifth Circuit affirmed in an unpublished opinion. *United States v. Anderson*, No. 24-10976, 2025 WL 2143700 (5th Cir. July 29, 2025) (reprinted at App. 1a–2a). On the guideline error, the panel assumed that "that the district court's application of § 2K2.1(a)(4)(A) was clear or obvious error." 2025 WL 2143700, at *1. But it affirmed because of "(1) the court's statements establishing that it thought the sentence imposed was appropriate regardless of the guidelines calculation; and (2) the court's explanation for the sentence under 18 U.S.C. § 3553(a)." *Id.* On the conviction itself, the panel held that precedent foreclosed all claims, relying exclusively on *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), to dispose of Anderson's Second Amendment challenge. *Id.*

REASONS FOR GRANTING THIS PETITION

I. This Court should clarify when a record shows "that the district court thought the sentence it chose was appropriate irrespective of the guidelines range."

"In most cases a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher guidelines range has demonstrated a reasonable probability of a different outcome" under Federal Rule of Criminal Procedure 52(b). *Molina-Martinez v. United States*, 578 U.S. 189, 198, 200 (2016). That said, a "record…may show…that the district court thought the sentence it chose was appropriate irrespective of the guidelines range." *Id.* at 200. In that case, the district court's sentencing explanation "could make it clear that the judge based the sentence he or she selected on factors independent of the guidelines." *Id.*

This Court should grant certiorari to resolve a circuit split on when a record that contains a guideline disclaimer rebuts *Molina-Martinez*'s default rule that mistakenly applying an incorrect, higher guideline range demonstrates an effect on substantial rights.

A. Lower courts are split on when a district court's explicit statement that it would have imposed the same sentence irrespective of the guidelines insulates guideline errors from appellate review.

If "the district court explicitly states that it would have imposed the same sentence of imprisonment regardless of the underlying Sentencing Guideline range," the Eighth Circuit will not review the guideline error. *United States v. Peterson*, 887 F.3d 343, 349 (8th Cir. 2018)(quoting *United States v. Davis*, 583 F.3d 1081, 1094–95 (8th Cir. 2009)). In the Eleventh Circuit too, a routine disclaimer is "'all we need to know'

to hold that any potential error was harmless." *United States v. Henry*, 1 F.4th 1315, 1327 (11th Cir. 2021)(quoting *United States v. Keene*, 470 F.3d 1347, 1349 (11th Cir. 2006)); *accord United States v. Grady*, 18 F.4th 1275, 1291 (11th Cir. 2021) (citing *Keene*, 470 F.3d at 1348–49) ("[A] guidelines error is harmless if the district court unambiguously expressed that it would have imposed the same sentence, regardless of the guidelines calculation[].").

The Second, Third, Ninth, and Tenth Circuits disagree. The Second Circuit has warned every sentencing court that it should "not try to answer the hypothetical question of whether or not it definitely would impose the same sentence on remand if [the court of appeals] found particular enhancements erroneous." *United States v. Feldman*, 647 F.3d 450, 460 (2d Cir. 2011). "Nor do we believe that criminal sentences may or should be exempted from procedural review with the use of a simple incantation: 'I would impose the same sentence regardless of any errors calculating the applicable guidelines range.'" *Id.*; *see also United States v. Seabrook*, 968 F.3d 224, 233–34 (2d Cir. 2020) ("[T]he district court cannot insulate its sentence from our review by commenting that the guidelines range made no difference to its determination when the record indicates that it did.").

In the Third Circuit, a disclaimer is also insufficient. The sentencing court would have to conduct a full, three-step sentencing process before selecting a valid alternative sentence: (1) calculate the correct Guideline range as a starting point; (2) decide whether to depart under the guidelines; and then (3) weigh the 18 U.S.C.

§ 3553(a) factors to determine whether a variance is appropriate. *United States v. Wright*, 642 F.3d 148, 154–55 & n.6 (3d Cir. 2011).

The Ninth Circuit agrees: a Guideline error is harmless only if the district court "performs its sentencing analysis twice." *United States v. Williams*, 5 F.4th 973, 978 (9th Cir. 2021) (quoting *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 n.5 (9th Cir. 2011)) (cleaned up). A "mere statement" that the court would impose the same sentence "'no matter what the correct calculation cannot, without more, insulate the sentence from remand' if 'the court's analysis did not flow from an initial determination of the correct guidelines range.'" *Id.* (quoting *Munoz-Camarena*, 631 F.4d at 1031).

The Tenth Circuit also gives "little weight to the district court's statement that its conclusion would be the same 'even if all of the defendant's objections to the presentence report had been successful.'" *United States v. Gieswein*, 887 F.3d 1054, 1062–63 (10th Cir. 2018). It "has rejected the notion that district courts can insulate sentencing decisions from review by making such statements." *Id.* (citing *United States v. Pena-Hermosillo*, 522 F.3d 1108, 1109 (10th Cir. 2008)).

The Fifth Circuit is inconsistent in its approach. Some panels align with the Second, Third, Ninth, and Tenth Circuits. *See, e.g.*, *United States v. Ritchey*, 117 F.4th 762, 767 (5th Cir. 2024) ("This statement is relevant to the harmless error inquiry, but it is not decisive."); *United States v. Tanksley*, 848 F.3d 347, 353 (5th Cir. 2017) ("Nonetheless, it is not enough for the district court to say the same sentence would have been imposed but for the error."); *United States v. Martinez-Romero*, 817 F.3d

917, 925–26 (5th Cir. 2016) ("The court stated three times that even if the 16–level enhancement for the attempted kidnapping was incorrect, it would nonetheless impose the same 46–month sentence." Even so, the "sentencing error [was] not harmless."). But the panel below aligned with the Eighth and Eleventh Circuits' approach. *United States v. Anderson*, No. 24-10976, 2025 WL 2143700, at *1 (5th Cir. July 29, 2025) (citing *United States v. Hott*, 866 F.3d 618, 621 (5th Cir. 2017)). Several other Fifth Circuit panels have as well. *See, e.g.*, *United States v. Reyna-Aragon*, 992 F.3d 381, 387–89 (5th Cir. 2021); *United States v. Medel-Guadalupe*, 987 F.3d 424, 429 (5th Cir. 2021); *United States v. Redmond*, 965 F.3d 416, 420–21 (5th Cir. 2020); *United States v. Vega-Garcia*, 893 F.3d 326, 328 (5th Cir. 2018); *United States v. Guzman-Rendon*, 864 F.3d 409, 411–12 (5th Cir. 2017).

B. Declining to review guideline errors based on a mere disclaimer and perfunctory sentencing explanation undermines the role of the guidelines and frustrates Congressional policy.

The guidelines function as a "framework," *Molina-Martinez*, 578 U.S. at 192, an "anchor," *id*. at 204, a "lodestar," *id*. at 200, and a "benchmark and starting point," *Gall v. United States*, 552 U.S. 38, 49 (2007), in federal sentencing. Although advisory only, *United States v. Booker*, 543 U.S. 220 (2005), the district court must begin each sentencing determination by correctly calculating the range, *Gall*, 552 U.S. at 49. Mistakes in the guidelines' application constitute "significant procedural error," *Gall*, 552 U.S. at 50–51, and appellate courts presume that guideline errors affect the sentence imposed in the ordinary case, *Molina-Martinez*, 578 U.S. at 200–01, 204. A defendant subject to a harsher guideline at the time of sentencing versus the time of the offense also can raise an *ex post facto* claim, the advisory nature of the guidelines

notwithstanding. *Peugh v. United States*, 569 U.S. 530 (2013). And appellate courts presume that guideline sentences within correctly calculated ranges are reasonable, such that a district court need not explain a guideline sentence. *Rita v. United States*, 551 U.S. 338, 341, 357 (2007).

Congress adopted the guideline schema to promote proportionality and uniformity of sentences among similarly situated offenders. *Rita*, 551 U.S. at 349. Appellate review is critical to achieving that goal because it clears ambiguities that otherwise would differently impact litigants within a Circuit. *See* S. Rep. No. 225, 98th Cong., 2d Sess. 151 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3182, 3334 (describing the right to appellate review "essential to assure that the guidelines are applied properly and to provide case law development of the appropriate reasons for sentencing outside the guidelines."). This process also alerts the Sentencing Commission that an Amendment might be necessary. *Rita*, 551 U.S. at 350; *Braxton v. United States*, 500 U.S. 344, 348 (1991).

Crediting routine guideline disclaimers at face value, without conducting a more searching inquiry of the record, undermines this framework. Many judges, after all, regard the guidelines as complicated and cumbersome. *See United States v. Williams*, 431 F.3d 767, 773 (11th Cir. 2005) (Carnes, J., concurring) ("The *Booker* decision did not free us from the task of applying the Sentencing guidelines, some provisions of which are mind-numbingly complex and others of which are just mind-numbing."). District courts that do not wish to carefully scrutinize the guidelines' application, or revisit any thorny questions relevant to their application, may be tempted to

insulate all sentences from review by issuing a simple guideline disclaimer. Indeed, distinguished Circuit judges have encouraged such disclaimers precisely to avoid frustrating and difficult guideline adjudications. *See Williams*, 431 F.3d at 773 (Carnes, J., concurring).

Widespread acceptance of guideline disclaimers also diminishes the anchoring effect of the guidelines. Indeed, a concurring and dissenting opinion of the Fourth Circuit has argued that this is already the condition of federal sentencing:

> The evolution of our harmless error jurisprudence has reached the point where any procedural error may be ignored simply because the district court has asked us to ignore it. In other words, so long as the court announces, without any explanation as to why, that it would impose the same sentence, the court may err with respect to any number of enhancements or calculations. More to the point, a defendant may be forced to suffer the court's errors without a chance at meaningful review. *Gall* is essentially an academic exercise in this circuit now, never to be put to practical use if district courts follow our encouragement to announce alternative, variant sentences. If the majority wishes to abdicate its responsibility to meaningfully review sentences for procedural error, the least it can do is acknowledge that it has placed *Gall* in mothballs, available only to review those sentences where a district court fails to cover its mistakes with a few magic words.

United States v. Gomez-Jimenez, 750 F.3d 370, 390 (4th Cir. 2014) (Gregory, J., concurring and dissenting in part) (footnote omitted).

This Court should grant the petition for certiorari to decide whether a routine guideline disclaimer is enough to trigger *Molina-Martinez*'s exception and insulate an erroneous sentence from appellate review.

C. This case well presents the issue.

Anderson's case is an apt vehicle for resolving this split. First, the district court made contradictory statements in the record about the effect the guidelines had on its sentence. *Compare* ROA.160 ("I'll state the sentence determined after my consideration of…especially the advisory sentencing guidelines") *with* ROA.162 ("And even if we didn't have these guideline calculations, I would have still imposed the same sentence under the facts and circumstances of the case."). Second, the district court imposed a 51-month sentence, the very edge of the erroneous range; and it reported its sentence as a guideline sentence, not a variance. ROA.200-02. Third, the court never explained why, if it opted to vary upward, the 18 U.S.C. § 3553(a) factors resulted in a variance to 51 months from the 21–27 months guideline range that correctly applied. *See* Appellant's Initial Br. at 19–23, *United States v. Anderson*, No. 24-10976 (5th Cir. July 29, 2025), 2025 WL 1591312, at *19–23. Its brief statement on the § 3553(a) factors explain why the court chose the sentence it did *within* the range, not why the court would sentence outside of it. *See* Appellant's Initial Br. 22–23, 2025 WL 1591312, at *22–23. Finally, the Fifth Circuit presumed clear or obvious error and ruled against Anderson's challenge solely because "(1) the court's statements establishing that it thought the sentence imposed was appropriate regardless of the guidelines calculation; and (2) the court's explanation for the sentence under 18 U.S.C. § 3553(a)." *Anderson*, 2025 WL 2143700, at *1.

D. In the alternative, the Court should hold the instant petition pending the resolution of another case presenting the same issue.

This Court should grant certiorari to decide this momentous issue; and if it declines to grant plenary review here, the Court has other opportunities to resolve the split. *See Medrano v. United States*, No. 24-7508 (U.S. filed June 24, 2025); *Sullivan v. United States*, No. 25-5357 (U.S. filed Aug. 12, 2025). Should the Court grant certiorari in another case, it should hold Anderson's petition pending the outcome. *See Lawrence on Behalf Lawrence v. Chater*, 516 U.S. 163, 166 (1996); *Stutson v. United States*, 516 U.S. 163, 181 (1996) (Scalia, J., dissenting) (emphasis in original) ("We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be 'GVR'd' when the case is decided.").

II. Lower courts require guidance on how to adjudicate Second Amendment challenges to 18 U.S.C. § 922(g)(1) prosecutions.

The Second Amendment guarantees "the right of the people to keep and bear arms." U.S. Const. amend. II. Yet § 922(g)(1) indiscriminately denies that right to anyone previously convicted of a crime punishable by a year or more. Despite the undeniable conflict between the constitutional and statutory text, Second Amendment challenges to § 922(g)(1) prosecutions have historically and uniformly failed. *See United States v. Moore*, 666 F.3d 313, 316–17 (4th Cir. 2012) (collecting authorities).

But *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), minted a new text-and-history test for adjudicating Second Amendment claims.

"When the Second Amendment's plain text covers an individual's conduct," the government now must "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. No longer may the government defend a regulation by showing that it is narrowly tailored to achieve an important or even compelling state interest. *Id.* at 17–24. As for the particulars of the "historical inquiry" courts must conduct, *Bruen* explained that "whether a historical regulation is a proper analogue for a distinctly modern firearm regulation" depends on "whether the two regulations are 'relevantly similar.'" *Id.* at 28–29 (quoting C. Sunstein, On Analogical Reasoning, 106 Harv. L. Rev. 741, 773 (1993)). Relevant similarity, as sketched out by *Bruen*, means that the regulations must match on "how and why" the Second Amendment right is burdened. *Id.* at 29. Otherwise stated, "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations…." *Id.* (cleaned up).

United States v. Rahimi, 602 U.S. 680 (2024), then applied *Bruen* to a federal firearm crime. But *Rahimi* "conclude[d] only this: An individual *found by a court* to pose a credible *threat to the physical safety of another* may be *temporarily* disarmed consistent with the Second Amendment." *Rahimi*, 602 U.S. at 702 (emphasis added). True, *Rahimi* clarified that "the appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (citing *Bruen*, 597 U.S. at 26–31) (emphasis added). And it found that "Section 922(g)(8)['s]…prohibition on the possession of firearms by those

found by a court to present a threat to others fits neatly within the tradition th[at] surety and going armed laws," both "founding era regimes," "represent." *Id.* at 698. But *Rahimi*'s reasoning left unresolved whether the government could invoke this tradition to justify a statute like § 922(g)(1) — which imposes an *uncabined* and *permanent* firearm possession ban irrespective of any threat, judicially determined or otherwise, that a person may pose. When it comes to § 922(g)(1), *Rahimi* left plenty unresolved.

A. The courts of appeals are deeply divided over the scope of the Second Amendment right.

As Justice Jackson recently observed, "lower courts applying *Bruen*'s approach have been unable to produce consistent, principled results, and, in fact, they have come to conflicting conclusions on virtually every consequential Second Amendment issue to come before them." *Rahimi*, 602 U.S. at 743 (Jackson, J., concurring) (cleaned up). Some circuits see no need to conduct *Bruen*'s text-and-history analysis in the § 922(g)(1) context, relying instead on dicta predating *Bruen*. Others apply *Bruen*'s text-and-history framework but disagree on whether felons are part of "the people" protected by the Second Amendment, are split on the traditions that justify § 922(g)(1), and vary as to whether the statute is vulnerable to as-applied challenges.

Five circuits "have upheld the categorical application of § 922(g)(1) to all felons." *United States v. Duarte*, 137 F.4th 743, 747 (9th Cir. 2025) (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); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024), *cert. granted,*

judgment vacated, 145 S. Ct. 1041 (2025)); *Duarte*, 137 F.4th at 748 ("Today, we align ourselves with the Fourth, Eighth, Tenth and Eleventh Circuits and hold that § 922(g)(1) is not unconstitutional as applied to non-violent felons like Steven Duarte."). Each placed significant weight on this Court's statement in *District of Columbia v. Heller*, 554 U.S. 570, 626–27 & n.26 (2008), that "prohibitions on the possession of firearms by felons" are "presumptively lawful." *See Hunt*, 123 F.4th at 703–04; *Jackson*, 110 F.4th at 1128–29 *Vincent*, 127 F.4th at 1265; *Dubois*, 94 F.4th at 1293; *Duarte*, 137 F.4th at 750–52.

The Fourth, Eighth and Ninth Circuits went farther. The Fourth Circuit concluded that both the text and history supported the exclusion of felons from the arms-bearing right. *See Hunt*, 123 F.4th at 704–08. The Eighth Circuit reached the same end point based on history alone. *See Jackson*, 110 F.4th at 1126–29. The en banc Ninth Circuit most recently "agree[d] with the Fourth and Eighth Circuits that…historical tradition is sufficient to uphold the application of § 922(g)(1) to all felons." *Duarte*, 137 F.4th at 761 (citing *Jackson*, 110 F.4th at 1127–28; *Hunt*, 123 F.4th at 706.).[1]

Two circuits — including the Fifth Circuit — have endorsed that "§ 922(g)(1) might be unconstitutional as applied to at least *some* felons." *Duarte*, 137 F.4th at 748 (citing *United States v. Diaz*, 116 F.4th 458, 471 (5th Cir. 2024); *United States v.*

[1] In *Duarte*, the en banc Ninth Circuit overruled a panel opinion holding 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, 661–63 (9th Cir.), *reh'g en banc granted, opinion vacated*, 108 F.4th 786 (9th Cir. 2024), *on reh'g en banc*, 137 F.4th 743 (9th Cir. 2025).

Williams, 113 F.4th 637, 661–62 (6th Cir. 2024)). And "the Third Circuit has held that § 922(g)(1) is unconstitutional as applied to a felon who was convicted of making a false statement to secure food stamps." *Duarte*, 137 F.4th at 748 (citing *Range v. Att'y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)). The Fifth Circuit split with its sister courts by first discarding the notion that *Heller*'s "presumptively lawful" dicta could "supplant the most recent analysis set forth by the Supreme Court in *Rahimi*…." *Diaz*, 116 F.4th at 466. On this point, the Third Circuit and Sixth Circuit agree. *Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit endorsed capital punishment at the founding as a dispositive historical analogue, *see Diaz*, 116 F.4th at 467–70, whereas the Third Circuit found the historical availability of the death penalty irrelevant, *see Range*, 124 F.4th at 231; *accord Kanter v. Barr*, 919 F.3d 437, 461–62 (7th Cir. 2019), *abrogated by Bruen* (Barrett, J., dissenting). The linchpin for the Third Circuit's constitutional holding instead relied on the lack of evidence that the claimant "poses a physical danger to others." *Range*, 124 F.4th at 232.

For its part, the Sixth Circuit blessed "governments label[ing] whole classes as presumptively dangerous," *Williams*, 113 F.4th at 657, but "refuse[d] to defer blindly to § 922(g)(1) in its present form." *Range*, 124 F.4th at 230 (citing *Williams*, 113 F.4th at 658–61). According to the Sixth Circuit, "history shows that § 922(g)(1) might be susceptible to an as-applied challenge" by individuals who show they are "not dangerous…." *Williams*, 113 F.4th at 657. The Fifth Circuit later agreed with this "dangerousness" demarcator. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025)

(citing *Williams*, 113 F.4th at 661–62). But the two circuits still depart on the scope of the "dangerousness" inquiry. *Compare Schnur*, 132 F.4th 863, 867 ("In assessing Schnur's criminal history under § 922(g)(1), this court 'may consider prior convictions that are 'punishable by imprisonment for a term exceeding one year.'" (quoting *Diaz*, 116 F.4th at 467)) *with Williams*, 113 F.4th at 659–60 ("When evaluating a defendant's dangerousness, a court may consider a defendant's entire criminal record—not just the specific felony underlying his § 922(g)(1) conviction.").

Disagreements abound intra-circuit too. In *Range*, the en banc Third Circuit generated six opinions, including one dissent. The Ninth Circuit in *Duarte*, also en banc, generated four opinions, including one partial dissent. *Williams*, a panel decision, produced a concurrence in the judgment only.

In short, jurists "are currently at sea when it comes to evaluating firearms legislation" and in acute "need [of] a solid anchor for grounding their constitutional pronouncements." *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

B. This issue implicates the prosecution and incarceration of thousands of individuals.

As of October 9, 2025, the Bureau of Prisons reported that it imprisons 155,197 people.[2] And as of September 27, 2025, 22% of inmates (31,722) were incarcerated for "Weapons, Explosives, [and] Arson" offenses, the second largest category of offenses within the federal prison population.[3] "For more than 25 years" in fact, firearm crimes

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[2] *Statistics*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/population_statistics.jsp (last visited October 16, 2025).

[3] *Statistics – Inmate Offenses*, Federal Bureau of Prisons, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp (last visited October 16, 2025).

have been one of the "four crime types" that "have comprised the majority of federal felonies and Class A misdemeanors[.]"[4] In fiscal year 2021, "[c]rimes involving firearms were the third most common federal crimes[.]"[5] Of the 57,287 individuals sentenced, 8,151 were firearm cases—a 14.2% share.[6] This represents an 8.1% increase from the year before, despite the number of cases reported to the U.S. Sentencing Commission declining by 11.3% and hitting an all-time low since fiscal year 1999.[7] In fiscal year 2024, 7,419 of the cases reported to the U.S. Sentencing Commission involved convictions under 18 U.S.C. § 922(g) — 90.4% of those involved § 922(g)(1) convictions specifically.[8]

These figures only capture the tail end of the criminal process. The scope of prosecutions looms larger. "The Department of Justice filed firearms-related charges in upwards of 13,000 criminal cases during the 2021 fiscal year." *United States v. Kelly*, No. 3:22-CR-00037, 2022 WL 17336578, at *3 (M.D. Tenn. Nov. 16, 2022) (citing Executive Office for United States Attorneys, U.S. Dept. of Justice, Annual Statistical

[4] *Fiscal Year 2021 Overview of Federal Criminal Cases* at 4, U.S. SENTENCING COMM'N (April 2022), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/FY21_Overview_Federal_Criminal_Cases.pdf.
[5] *Id.* at 19.
[6] *Id.* at 1, 5.
[7] *Id.* at 2.
[8] *FY 2024 Quick Facts 18 U.S.C. § 922(g) Firearms Offenses*, U.S. SENTENCING COMM'N, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY24.pdf.

Report Fiscal Year 2021 at 15 (Table 3C), available at https://www.justice.gov/usao/page/file/1476856/download). That number remained above 10,000 in fiscal year 2024.[9] The scale of the question presented warrants this Court's attention.

III. This Court should delineate the boundaries of federal authority under the Commerce Clause in the firearm context.

A predecessor to 18 U.S.C. § 922(g), the Omnibus Crime Control and Safe Streets Act of 1968 prohibited "[a]ny person who…has been convicted by a court of the United States or of a State…of a felony" from receiving, possessing, or transporting "in commerce or affecting commerce any firearm." Pub. L. No. 90-351, § 1202, 82 Stat. 197. In *Scarborough v. United States*, this Court addressed "whether proof that the possessed firearm previously traveled in interstate commerce is sufficient to satisfy the *statutorily* required nexus between the possession of a firearm by a convicted felon and commerce." *Scarborough v. United States*, 431 U.S. 563, 564 (1977) (emphasis added). *Scarborough* answered this question "yes," but the Court did not linger on the constitutional implications of its statutory construction. *See id.* at 577; *see also United States v. Johnson*, 42 F.4th 743, 750 (7th Cir. 2022) (noting that the decision in *Scarborough* "was one of statutory interpretation"); *United States v. Seekins*, 52 F.4th 988, 991 (5th Cir. 2022) (Ho, J., dissenting from denial of rehearing en banc) ("[T]he Court's holding in *Scarborough* was statutory, not constitutional.").

By contrast, this Court *did* examine the constitutional question presented by 18 U.S.C. § 922(q) in *United States v. Lopez*, 514 U.S. 549 (1995). The statute "made

[9] *United States Attorneys' Annual Statistical Report Fiscal Year 2024* tbl. 3(C), U.S. DEP'T OF JUSTICE, *available at* https://www.justice.gov/usao/media/1399686/dl?inline.

it a federal offense 'for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.'" *Id.* at 551 (quoting 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V)). The district court held that the act constituted a valid exercise of Congress's commerce power, but the appellate court reversed. *Id.* at 551–52. This Court affirmed the appellate court's ruling that the statute lay "beyond the power of Congress under the Commerce Clause." *Id.* at 552.

In so doing, the Court cabined Congress's commerce power to "three broad categories of activity" subject to regulation: (1) "the use of the channels of interstate commerce"; (2) activities, even if intrastate, that threaten "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce." *Id.* at 558–59 (internal citations omitted). The Court quickly disposed of any justification for § 922(q) under the first two categories, focusing its inquiry on the third. *Id.* at 559. It noted that § 922(q) was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise," elaborating in a footnote that "States possess primary authority for defining and enforcing the criminal law" and that federal criminalization of "conduct already denounced as criminal by the States…effects a change in the sensitive relation between federal and state criminal jurisdiction." *Id.* at 561 & n.3. The Court also expressed deep concern that the government's arguments for why possession of a firearm in a local school zone substantially affected commerce lent themselves to no limiting principle, opening the door to a "a general federal police power." *Id.* at 563–66.

Ultimately, the Court concluded that "possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 567. "Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce." *Id.*

Given *Lopez*, it is "doubt[ful] that § 922(g)(8)" — and by extension § 922(g)(1) — "is a proper exercise of Congress's power under the Commerce Clause." *Rahimi*, 602 U.S. at 765 n.6 (2024) (citing *Lopez*, 514 U.S. at 585 (Thomas, J., concurring)) (Thomas, J., dissenting). But lower courts cannot conclusively resolve the tension between *Scarborough* and *Lopez*. The ultimate question posed by *Lopez* — "whether" intrastate possession of a firearm that crossed state lines long before the regulated possession "affect[s] interstate commerce sufficiently to come under the constitutional power of Congress to regulate" — "can be settled finally only by this Court." *United States v. Morrison*, 529 U.S. 598, 614 (2000) (cleaned up).

A. Federal appellate courts differ on the relationship between *Scarborough* and *Lopez*.

Federal courts have "cried out for guidance from this Court" on this issue for decades. *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. 700, 702 (2011) (Thomas, J., dissenting from denial of certiorari). Simply put, "*Scarborough* is in fundamental and irreconcilable conflict with the rationale of the United States Supreme Court in [*Lopez*]." *United States v. Kuban*, 94 F.3d 971, 977 (5th Cir. 1996) (DeMoss, J., dissenting). Still, the Fifth Circuit "continue[s] to enforce § 922(g)(1)" because it is

"not at liberty to question the Supreme Court's approval of the predecessor statute to [§ 922(g)(1)]." *United States v. Kirk*, 105 F.3d 997, 1015 n.25 (5th Cir. 1997) (en banc) (per curiam). *See also United States v. Rawls*, 85 F.3d 240, 243 (5th Cir. 1996) (per curiam) (Garwood, J., concurring) ("one might well wonder how it could rationally be concluded that mere possession of a firearm in any meaningful way concerns interstate commerce simply because the firearm had, perhaps decades previously before the charged possessor was even born, fortuitously traveled in interstate commerce," but concluding that *Scarborough*'s "implication of constitutionality" "bind[s] us, as an inferior court,…whether or not the Supreme Court will ultimately regard it as a controlling holding in that particular respect.").

The Fifth Circuit is not alone. *See, e.g.*, *United States v. Patterson*, 853 F.3d 298, 301–02 (6th Cir. 2017) ("If the *Lopez* framework is to have any ongoing vitality, it is up to this Court to prevent it from being undermined by a 1977 precedent," i.e., *Scarborough*, "that does not squarely address the constitutional issue." (quoting *Alderman v. United States*, 562 U.S. 1163, 131 S. Ct. at 703 (Thomas, J., dissenting from denial of certiorari))); *United States v. Cortes*, 299 F.3d 1030, 1037 n.2 (9th Cir. 2002) (although "[t]he vitality of *Scarborough* engenders significant debate," committing to "follow *Scarborough* unwaveringly" "[u]ntil the Supreme Court tells us otherwise"); *United States v. Bishop*, 66 F.3d 569, 587–88, 588 n.28 (3d Cir. 1995) (noting that, until the Supreme Court is more explicit on the relationship between *Lopez* and

Scarborough, a lower court is "not at liberty to overrule existing Supreme Court precedent"); *United States v. Patton*, 451 F.3d 615, 634–35 (10th Cir. 2006) (collecting cases).

Nine courts of appeals have upheld § 922(g)(1) based solely on *Scarborough*'s minimal nexus test. *See United States v. Smith*, 101 F.3d 202, 215 (1st Cir. 1996); *United States v. Santiago*, 238 F.3d 213, 216–17 (2d Cir. 2001) (per curiam); *United States v. Gateward*, 84 F.3d 670, 671–72 (3d Cir. 1996); *Rawls*, 85 F.3d at 242–43; *United States v. Lemons*, 302 F.3d 769, 771–73 (7th Cir. 2002); *United States v. Shelton*, 66 F.3d 991, 992 (8th Cir. 1995) (per curiam); *United States v. Hanna*, 55 F.3d 1456, 1461–62, 1462 n.2 (9th Cir. 1995); *United States v. Dorris*, 236 F.3d 582, 584–86 (10th Cir. 2000); *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010). Only two courts of appeals have engaged in *Lopez*'s substantial-effects test and reasoned that § 922(g)(1) is constitutional under it. *See United States v. Crump*, 120 F.3d 462, 466 & n.2 (4th Cir. 1997) (citing *United States v. Langley*, 62 F.3d 602, 606 (4th Cir. 1995) (en banc), *abrogated on other grounds by Rehaif v. United States*, 588 U.S. 225 (2019)); *United States v. Chesney*, 86 F.3d 564, 568–70 (6th Cir. 1996). Because courts often fail to apply the *Lopez* test to these firearm possession cases at all, defendants across the country lack the constitutional protection from congressional overreach provided by *Lopez*. For instance, applying *Lopez* would demand that § 922(g)'s "possess in or affecting commerce" element require either: 1) proof that the defendant's offense caused the firearm to move in interstate commerce; or, at least, 2) proof that the firearm moved in interstate commerce at a time reasonably near the offense. But

Scarborough continues to control the outcome in a large majority of circuits, leaving the "empty, formalistic" requirement of a jurisdictional provision as the only check on Congress' power to criminalize this kind of intrastate activity. *Chesney*, 86 F.3d at 580 (Batchelder, J., concurring).

B. An unchecked Commerce power would significantly expand Congress's reach into state affairs.

The federal government's enumerated powers are "few and defined," while the powers which remain in the state governments are "numerous and indefinite." *Lopez*, 514 U.S. at 552 (citing The Federalist No. 45, pp. 292–293 (C. Rossiter ed. 1961)). One such enumerated power is "[t]o regulate Commerce . . . among the several States[.]" U.S. Const. art. I, § 8, cl. 3. But without limits on federal regulatory power, our nationwide regulation would become "for all practical purposes . . . completely centralized" in a federal government. *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 548 (1935). And "constitutional limits on governmental power do not enforce themselves;" instead, "[t]hey require vigilant—and diligent—enforcement." *Seekins*, 52 F.4th at 989 (Ho, J., dissenting from denial of rehearing en banc).

"Congress may conclude that a particular activity substantially affects interstate commerce" to regulate the activity, but Congress's mere act of legislating "does not necessarily make it so." *Morrison*, 529 U.S. at 614 (quoting *Lopez*, 514 U.S. at 557 n.2) (cleaned up). Here, inserting the phrase "which has been shipped or transported in interstate or foreign commerce" after any object connected to intrastate activities that Congress may want to police cannot fulfill the constitutional requirement. *See Alderman*, 131 S. Ct. at 702 (Thomas, J., dissenting from the denial of certiorari)

("*Scarborough*, as the lower courts have read it, cannot be reconciled with *Lopez* because it reduces the constitutional analysis to the mere identification of a jurisdictional hook."). A judicial blessing of constitutional magnitude for this minimal nexus would "effectually obliterate the distinction between what is national and what is local and create a completely centralized government." *Lopez*, 514 U.S. at 557 (quoting *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)). The Commerce Clause power would be reduced to a rubber stamp, opening the door to a federal police power in direct contravention of the federal government the Constitution enshrines. *See Morrison*, 529 U.S. at 618 ("the Founders denied the National Government" "the police power," "reposed in the States"); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (the Commerce Clause "must be read carefully to avoid creating a general federal authority akin to the police power").

IV. This Court can grant certiorari to address the Second Amendment's application to modern federal firearm crimes in another case and hold the instant petition pending the outcome.

Even if the Court opts not to grant review here, the Second Amendment questions are worthy of certiorari. Indeed, the Solicitor General has sought certiorari review on how the Second Amendment applies to another status-based federal firearm crime, 18 U.S.C. § 922(g)(3), in numerous cases. *See United States v. Cooper*, No. 24-1247 (U.S. distributed for conference Oct. 17, 2025); *United States v. Daniels*, No. 24-1248 (U.S. distributed for conference Oct. 17, 2025); *United States v. Hemani*, No. 24-1234 (U.S. distributed for conference Oct. 17, 2025); *United States v. Sam*, No. 24-1249 (U.S. distributed for conference Oct. 17, 2025). If the Court grants certiorari in any of these cases, Anderson again respectfully requests that the Court

hold the instant petition and grant, vacate, and remand for reconsideration in light of its decision. *See Lawrence*, 516 U.S. at 166; *Stutson*, 516 U.S. at 181.

CONCLUSION

Petitioner Antonio Montrail Anderson respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 21st day of October, 2025.

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 29, 2025
Lyle W. Cayce
Clerk

No. 24-10976
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONIO MONTRAIL ANDERSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:24-CR-137-1

Before KING, HAYNES, and HO, *Circuit Judges*.

PER CURIAM:[*]

Antonio Montrail Anderson pleaded guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). He contends that the district court erred by applying an enhanced base offense level pursuant to U.S.S.G. § 2K2.1(a)(4)(A), based on a prior controlled substance offense conviction. In addition, he contends that the court misadvised him on the

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

interstate commerce element of § 922(g)(1) and that the statute violates the Commerce Clause and the Second Amendment, though he concedes that these challenges are foreclosed. We review each argument for plain error. *See United States v. Hott*, 866 F.3d 618, 621 (5th Cir. 2017); *United States v. Trejo*, 610 F.3d 308, 313 (5th Cir. 2010); *United States v. Sanches*, 86 F.4th 680, 684-85 (5th Cir. 2023).

As to the claimed guidelines error, we assume arguendo that the district court's application of § 2K2.1(a)(4)(A) was clear or obvious error. *See United States v. Pierre*, 88 F.4th 574, 581 (5th Cir. 2023). However, Anderson has not met his burden of establishing that any error affected his substantial rights in light of (1) the court's statements establishing that it thought the sentence imposed was appropriate regardless of the guidelines calculation; and (2) the court's explanation for the sentence under 18 U.S.C. § 3553(a). *See Hott*, 866 F.3d at 621.

Moreover, Anderson correctly concedes that the challenges to his conviction are foreclosed. In short, he was correctly advised on the interstate commerce element of § 922(g)(1), and there is a sufficient factual basis supporting that element. *See United States v. Rawls*, 85 F.3d 240, 242-43 (5th Cir. 1996). And we have held that § 922(g)(1) does not exceed Congress's power under the Commerce Clause as presently interpreted. *See United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013). Similarly, we have held that the statute does not facially violate the Second Amendment under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). *See United States v. Diaz*, 116 F.4th 458, 471-72 (5th Cir. 2024), *cert. denied*, 2025 WL 1727419 (U.S. June 23, 2025) (No. 24-6625).

AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

v.

ANTONIO ANDERSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24-CR-00137-P(01)
U.S. Marshal's No.: 43683-177
Levi Thomas for Justin Beck, Assistant U.S. Attorney
Christopher Weinbel, Attorney for the Defendant

On July 2, 2024 the defendant, ANTONIO ANDERSON, entered a plea of guilty as to Count One of the Indictment filed on June 5, 2024. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 922(g)(l) and 924(a)(8)	Possession of a Firearm by a Convicted Felon	12/25/2023	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 Indictment filed on June 5, 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 October 29, 2024.

Mark T. Pittman

MARK T. PITTMAN
U.S. DISTRICT JUDGE

Signed October 30, 2024.

IMPRISONMENT

The defendant, ANTONIO ANDERSON, 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 June 5, 2024. This sentence shall run consecutively to any future sentence which may be imposed in Case Nos. 1808056D and 1808170D pending in the 485th Judicial District Court, Tarrant County, Texas; Case No. 1683138D pending in Criminal District Court No. 4, Tarrant County, Texas; Case Nos. F2058103 and F2058104 pending in the Criminal District Court No. 7, Dallas County, Texas; and Case No. M2059078 pending in the Dallas County Criminal Court No. 4.

The Court recommends to the Bureau of Prisons 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 Indictment filed on June 5, 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;

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;

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

participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). Such programs may include group sessions led by a counselor or participation in a program administered by the probation office. The defendant shall pay the costs for the program, if financially able, as directed by the U.S. Probation Office; 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.

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: any firearm, magazine, and ammunition involved in or used in the commission of the offense, including but not limited to, the following: a Glock brand, Model 43, 9-millimeter pistol, bearing Serial No. AFLH612.

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