

No. _____

IN THE
Supreme Court of the United States

TERRANCE BAKER,

Applicant/Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Application for an Extension of Time Within
Which to File a Petition for Writ of Certiorari
to the Ninth Circuit Court of Appeals

APPLICATION TO THE HONORABLE JUSTICE ELENA KAGAN
AS CIRCUIT JUSTICE

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EXHIBIT 1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 28 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 23-3534

Plaintiff-Appellee,

D.C. No.

v.

2:18-cr-00779-PA-2

TERRANCE DOUGLAS BAKER,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Argued and Submitted January 21, 2025
San Diego, California

Before: WALLACE, MCKEOWN, and OWENS, Circuit Judges

Terrance Baker appeals from the district court’s resentencing after we affirmed counts against him for Hobbs Act robbery and conspiracy to commit Hobbs Act robbery but remanded “for a reduction in sentence or retrial on” a count for brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c), after holding that the firearm was found during an unlawful search and should have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

been suppressed. At resentencing, the district court reduced the special assessment by \$100 and removed the § 924(c) custodial sentence but added a previously unavailable firearm enhancement to the sentence for the affirmed counts to reach the same length of custodial sentence as previously imposed. *See United States v. Park*, 167 F.3d 1258, 1260 (9th Cir. 1999).

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's compliance with our mandate. *Hall v. City of Los Angeles*, 697 F.3d 1059, 1066 (9th Cir. 2012).

When, as here, Baker did not raise a claim of procedural error in sentencing in the district court but does so on appeal, we review the district court's determination for plain error. *United States v. Perez*, 962 F.3d 420, 454 (9th Cir. 2020).

Similarly, Baker did not preserve his claims that the conditions of his supervised release were unconstitutional, and we therefore review such claims for plain error as well. *See United States v. Garcia*, 507 F.3d 1213, 1220 (9th Cir. 2007), *amended and superseded on reh'g*, 522 F.3d 855 (9th Cir. 2008).

We affirm.

1. *Compliance with the Mandate.* We specified that we “reverse[d] the conviction under 18 U.S.C. § 924(c), and remand[ed] for a reduction in sentence or retrial on that count.” *United States v. Baker*, 58 F.4th 1109, 1127 (9th Cir. 2023).

The district court reduced the special assessment by \$100. While Baker asserts that the mandate's use of the word "sentence" refers only to the custodial sentence, our opinion included no such requirement. The special assessment is part of the sentence, and the district court therefore did not violate the mandate by reducing the special assessment. *See Hall*, 697 F.3d at 1067; *United States v. Kellington*, 217 F.3d 1084, 1093 (9th Cir. 2000). As such, the district court's imposition of the same length of custodial sentence, now based on the previously unavailable enhancement, did not violate the mandate.

2. *Federal Rule of Criminal Procedure 32 and Due Process.* Baker asserts that the district court violated Federal Rule of Criminal Procedure 32 and his right to due process by relying on materials outside the record and failing to disclose those materials prior to sentencing. The Federal Rules of Criminal Procedure provide that, at sentencing, the district court "must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence." Fed. R. Crim. P. 32(i)(1)(C); *see also United States v. Baldrich*, 471 F.3d 1110, 1113 (9th Cir. 2006), citing *United States v. Gonzalez*, 765 F.2d 1393, 1398–99 (9th Cir. 1985) ("[C]ompliance with Rule 32's requirement to disclose factual information relied on in sentencing satisfies the defendant's due process rights."). We have "interpreted Rule 32 'to require the disclosure of all relevant factual information to the defendant for adversarial testing.'" *United States v. Warr*, 530

F.3d 1152, 1162 (9th Cir. 2008), quoting *Baldrich*, 471 F.3d at 1114. But where a district court cites statistics for “well-known, common sense proposition[s]” rather than as “relevant factual information,” the district court does not necessarily violate Rule 32 or due process by failing to disclose the source of those statistics. *Warr*, 530 F.3d at 1162–63. Here, the district judge did not violate Rule 32 or due process by referring to gun violence statistics merely to underscore the seriousness of Baker’s crimes, as he otherwise properly relied on the 18 U.S.C. § 3553(a) factors to determine Baker’s sentence.

3. *Conditions of Supervised Release.* Baker asserts that the district court improperly delegated its authority to the United States Probation Office (USPO) by requiring him to comply with the regulations of the USPO and follow a probation officer’s instructions. He also contends that requiring him to “work at a lawful occupation” is unconstitutionally vague. Baker’s challenges regarding improper delegation of authority are premature because they require us to “speculate on circumstances under which the probation could be revoked,” which are more appropriately addressed “[i]f and when probation is revoked.” *United States v. Romero*, 676 F.2d 406, 407 (9th Cir. 1982); *see also United States v. Vega*, 545 F.3d 743, 750 (9th Cir. 2008) (deferring pre-enforcement challenges to conditions of supervised release as premature). Next, requiring Baker to work at a lawful occupation is not unconstitutionally vague, as the condition omits words that create

ambiguity as to the time or frequency with which Baker would have to work to avoid violating the terms of his supervised release. *United States v. Evans*, 883 F.3d 1154, 1163 (9th Cir. 2018). Consequently, Baker's challenges to the conditions of his supervised release are rejected.

AFFIRMED.

APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of this Court, Applicant/Petitioner Terrance Baker respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari, to and including October 27, 2025.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *United States v. Baker*, No. 23-3534 (February 28, 2025) (attached as Exhibit 1). The Ninth Circuit denied Mr. Baker's petition for rehearing en banc on May 28, 2025 (attached as Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for a writ of certiorari pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari is due to be filed on or before August 26, 2025. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant/Petitioner respectfully requests a 60-day extension of time within which to file a petition for a writ of certiorari seeking review of the decision of the Ninth Circuit Court of Appeals in this case, to and including October 27, 2025.

The extension of time is sought largely because of the press of counsel's other business and work on behalf of indigent clients. For example, since the petition for rehearing was denied in this case, undersigned counsel has been responsible for the following: (1) an opening brief filed May 22, 2025 in *United States v. James*, No. 24-


4267 (9th Cir.); (2) a reply brief filed May 28, 2025 in *People v. Brashear*, No. B334538 (Cal. Ct. App.); (3) a reply brief filed June 23, 2025 in *People v. Rauda*, No. B331030 (Cal. Ct. App.); and (4) an opening brief filed July 28, 2025 in *United States v. Schoepflin*, Consolidated Nos. 23-4311, 23-4317, and 25-3384 (9th Cir.). Between today's date and the requested deadline of October 27, 2025, counsel is also responsible for three additional opening briefs and one additional cert petition.

CONCLUSION

For the foregoing reasons, Applicant/Petitioner Terrance Baker respectfully requests that this Court, and the Honorable Justice Elena Kagan, grant an extension of time of 60 days, to and including October 27, 2025, within which to timely file a petition for a writ of certiorari in this case.

Respectfully submitted,

DATED: August 12, 2025


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EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 28 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERRANCE DOUGLAS BAKER,

Defendant-Appellant.

No. 23-3534

D.C. No.
2:18-cr-00779-PA-2

ORDER

Before: WALLACE, MCKEOWN, and OWENS, Circuit Judges

The panel has unanimously recommended denying the petition for rehearing en banc.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petition for rehearing en banc is therefore DENIED.