

No. _____

In the
Supreme Court of the United States

Kelsey Dwayne Hunter,

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. Should this Court grant, vacate, and remand for reconsideration because of an intervening circuit decision that may invalidate precedent on which the panel opinion below relies?
3. Does Petitioner Kelsey Dwayne Hunter’s 18 U.S.C. § 922(g)(1) conviction violate the Second Amendment?
4. 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 Kelsey Dwayne Hunter, 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. Hunter*, No. 3:23-cr-00259-S, U.S. District Court for the Northern District of Texas. Judgment entered on June 13, 2025.
- *United States v. Hunter*, No. 25-10732, U.S. Court of Appeals for the Fifth Circuit. Judgment entered on June 23, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Kelsey Dwayne Hunter 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The Fifth Circuit's unpublished opinion is available at *United States v. Hunter*, No. 25-10732, 2026 WL 1805105 (5th Cir. June 23, 2026). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence in *United States v. Hunter*, No. 3:23-cr-00259-S (N.D. Tex. June 13, 2025), is reprinted in Appendix B.

JURISDICTION

The Fifth Circuit entered judgment on June 23, 2026. 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

Before this case, Petitioner Kelsey Dwayne Hunter was convicted of misdemeanor assault, misdemeanor theft, unlawful possession of a firearm, felony assault, evading arrest, disorderly conduct, and felony drug possession. ROA.143-50.

Then, on April 11, 2023, local law enforcement stopped Hunter after it was reported that Hunter had punched someone. ROA.140. Police confirmed that Hunter had an outstanding warrant, and during a search incident to arrest, found a firearm in Hunter's fanny pack. ROA.140. Hunter was arrested for unlawful possession of a firearm by a felon. ROA.140. A federal agent later examined and "determined the firearm was not manufactured in Texas...." ROA.140.

A federal grand jury then indicted Hunter for violating 18 U.S.C. § 922(g)(1), which makes it a crime for felons to "possess in or affecting commerce" a firearm. ROA.8-10. Hunter moved to dismiss on three grounds. ROA.40-49. First, he argued that § 922(g)(1) was unconstitutional as outside Congress's commerce power.

ROA.41-45. In a footnote, Hunter acknowledged that the constitutional issue arose because of precedent interpreting the offense’s “in or affecting commerce” element. ROA.42. And he expressed disagreement with this statutory interpretation. ROA.43. Next, Hunter argued that prosecuting him under the statute violated the Second Amendment. ROA.45-48. The district court denied the motion. ROA.76-77.

Hunter then pleaded guilty without a plea agreement. ROA.8, 78-81, 116. At rearraignment, the presiding judge advised Hunter that conviction under § 922(g)(1) required proof of four elements. ROA.113-14. For the “in and affecting commerce” element, the judge stated that the element was met when, “before the Defendant possessed the firearm, it had traveled from one state to another.” ROA.114. Hunter had stipulated prior to the hearing that “he knowingly possessed, in and affecting interstate and foreign commerce, a firearm, to wit: a Taurus, Model G2C, 9mm caliber pistol, bearing serial number TMT48019....” ROA.80. Hunter then admitted at the hearing that he committed the crime’s essential elements as defined by the judge. ROA.114. Hunter also affirmed that his written stipulation was “true and correct.” ROA.114. The court found Hunter’s guilty plea was knowing and voluntary and that a sufficient factual basis supported it. ROA.82, 85, 116.

In the Presentence Investigation Report (PSR), the probation officer assessed no specific offense characteristic enhancements, but the officer did impose an enhanced base offense level under U.S. Sent’g Comm’n, Guidelines Manual §2K2.1(a)(4)(B)(i)(I) & (ii)(I) (Nov. 2024). ROA.141-42. The officer ultimately calculated Offense Level 17 Criminal History Category V, which produced a guideline

range of 46–57 months. ROA.157. No party objected to the guideline range. ROA.161-64. At sentencing, the court adopted the PSR and its 46–57 months range. ROA.125.

The defense requested a downward variance or, alternatively, a sentence at the bottom of the range. ROA.125-29. The government urged a sentence at the high end of the range, citing the seriousness of the offense, deterrence, and protection of the public. ROA.130-31. The court stated it had considered the 18 U.S.C. § 3553(a) factors and “especially the advisory sentencing guidelines,” denied the variance request, and imposed a sentence of 57 months. ROA.131. The court repeated that it “considered the advisory guidelines” after pronouncing sentence. ROA.132. Despite its prior statements, however, the court claimed towards the end of the hearing: “[F]or the record, even if the guideline range was not calculated or applied correctly, the Court states it would have imposed the same sentence for the reasons given during this sentencing hearing regardless of the applicable guideline range.” ROA.133. The district court specifically noted “protection of the public and the reasons articulated by Government’s counsel during this hearing.” ROA.133. In its Statement of Reasons, however, the district court classified its sentence as a guideline sentence and made no findings on a variance. ROA.166-67.

II. Appellate Proceedings

In his appeal, Hunter raised four challenges: one to his sentence, and three to his conviction. As to his sentence, Hunter argued that the district court plainly erred by applying an enhanced offense level because the district court acted on plainly insufficient evidence. As to his conviction, Hunter made three arguments. First, he argued that precedent misinterpreted “in or affecting commerce” as stated in 18 U.S.C.

§ 922(g). Second, Hunter maintained that if precedent correctly interpreted the statute, then Congress exceeded its commerce power when it enacted § 922(g). Third, Hunter 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. Hunter*, No. 25-10732, 2026 WL 1805105 (5th Cir. June 23, 2026) (reprinted at Pet. App’x a001–a002). On the guideline error, the panel agreed that “[t]he assessment of the enhanced base offense level constituted clear or obvious error.” 2026 WL 1805105, at *1. But it nonetheless affirmed because of “(1) the district court’s statements establishing that it believed the sentence imposed was appropriate regardless of the Sentencing 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. *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 court’s disclaimed reliance on the guidelines 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. *Hunter*, 2026 WL 1805105, at *1 (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 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.

Hunter's case is an apt vehicle for resolving this split. First, the district court made contradictory statements about the effect the guidelines had on its sentence. *Compare* ROA.131 ("I will now state the full sentence determined after consideration of all the factors set out in Title 18, U.S.C., 3553(a), including especially the advisory sentencing guidelines") *with* ROA.133 ("even if the guideline range was not calculated or applied correctly, the Court states it would have imposed the same sentence for the reasons given during this sentencing hearing regardless of the applicable guideline range"). Second, the district court imposed a 57-month sentence, *see* ROA.91, the very edge of the erroneous range, *see* ROA.125; and it reported its sentence as a guideline sentence, not a variance. ROA.166-67. Third, the court never adequately explained why, if it opted to vary upward, the 18 U.S.C. § 3553(a) factors resulted in a variance

to the degree of two years from the guideline range that correctly applied. *See* Appellant’s Reply Br. at 7–8, *United States v. Hunter*, No. 25-10732, 2026 WL 1805105 (5th Cir. June 23, 2026), 2026 WL 328513. 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 id.* Finally, the Fifth Circuit found clear or obvious error and nonetheless ruled against Hunter solely because “(1) the district court’s statements establishing that it believed the sentence imposed was appropriate regardless of the Sentencing Guidelines calculation; and (2) the court’s explanation for the sentence under 18 U.S.C. § 3553(a).” *Hunter*, 2026 WL 1805105, at *1.

II. At minimum, this Court should grant, vacate, and remand for reconsideration after the en banc Fifth Circuit decides *United States v. Squire*, No. 25-30324 (5th Cir. reh’g en banc granted July 20, 2026).

In *Squire*, the en banc Fifth Circuit will reconsider whether its precedent “is based on an erroneous reading of *Scarborough v. United States*, 431 U.S. 563 (1977),” and finally may “apply the [*United States v.*] *Lopez*[,514 U.S. 549 (1995)] framework to § 922(g)(1)” and “bring” the Fifth Circuit’s “precedent into conformity with Supreme Court precedent and the Constitution.” Pet. for Reh’g En Banc iv, *United States v. Squire*, No. 25-30324 (5th Cir. Jun. 16, 2026), ECF No. 75. The petition for en banc review specifically identified *United States v. Rawls*, 85 F.3d 240 (5th Cir. 1996), as the offending precedent. *Squire* Pet. for Reh’g En Banc iii–iv. The panel below relied on *Rawls* to adjudicate Hunter’s Commerce Clause challenge. *See Hunter*, 2026 WL 1805105, at *1 (citing *Rawls*, 85 F.3d at 242–43). If the Fifth Circuit overrules *Rawls*, therefore, the opinion below would rely on grounds since rejected.

“Where intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate.” *Lawrence on Behalf of Lawrence v. Chater*, 516 U.S. 163, 167 (1996). These intervening events “may include a wide range of developments, including our own decisions, State Supreme Court decisions, new federal statutes, administrative reinterpretations of federal statutes, new state statutes, changed factual circumstances, and confessions of error or other positions newly taken by the Solicitor General, and state attorneys general.” *Lawrence*, 516 U.S. at 166–67 (internal citations omitted) (citing *Conner v. Simler*, 367 U.S. 486, (1961); *Schmidt v. Espy*, 513 U.S. 801 (1994); *Sioux Tribe of Indians v. United States*, 329 U.S. 685 (1946); *Louisiana v. Hays*, 512 U.S. 1230 (1994); *NLRB v. Federal Motor Truck Co.*, 325 U.S. 838 (1945); *Wells v. United States*, 511 U.S. 1050 (1994); *Reed v. United States*, 510 U.S. 1188 (1994); *Ramirez v. United States*, 510 U.S. 1103 (1994); *Chappell v. United States*, 494 U.S. 1075 (1990); *Polsky v. Wetherill*, 403 U.S. 916 (1971)). The upcoming decision in *Squire*, a controlling and likely material decision of a lower court, falls comfortably within this framework. Thus, this Court should grant certiorari, vacate the judgment below, and remand for reconsideration in light of *Squire*.

III. 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 18 U.S.C. § 922(g)(1) indiscriminately denies that right to anyone “who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.” This Court should decide whether, when, and how § 922(g)(1) prosecutions fall outside the Second Amendment’s unqualified command.

A. To sustain a prosecution under § 922(g)(1), the government must identify historical analogues that match “why” and “how” § 922(g)(1) burdens the Second Amendment right.

“When the Second Amendment’s plain text covers an individual’s conduct,” the government must “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). The governing “historical inquiry” requires lower courts to find “a historical regulation” or “analogue” that is “‘relevantly similar’” to a “modern firearm regulation” to establish the constitutionality of the modern law. *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), applied *Bruen* to a conviction under 18 U.S.C. § 922(g)(8)(C)(i). 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), emphasizing that “a ‘historical twin’ is not required,” *id.* at 701 (quoting *Bruen*, 597 U.S. at 30) (emphasis in *Rahimi*). 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 a permanent firearm possession ban regardless of any threat, judicially determined or otherwise, that an individual person may pose. *Rahimi* thus still left lower courts “at sea when it comes to evaluating” § 922(g)(1), placing courts in acute “need [of] a solid anchor for grounding their constitutional pronouncements.” *Rahimi*, 602 U.S. at 747 (Jackson, J., concurring).

Last Term, the Court revisited how *Bruen* applies to federal firearm crimes in *United States v. Hemani*, 608 U.S. 772 (2026). *Hemani* considered an attempted prosecution under 18 U.S.C. § 922(g)(3) against Ali Hemani “because he uses marijuana

a few times a week.” 608 U.S. at 779, 794. *Hemani* held that the Second Amendment did not tolerate it. *Id.* at 794–95. *Hemani* again left unresolved, however, how *Bruen* applies to § 922(g)(1). *Id.* at 791 n.6, 794.

Lacking that guidance, “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).

B. The lower courts have split on the Second Amendment’s text, history, and application to § 922(g)(1) prosecutions today.

To start, 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 about whether felons are part of “the people” protected by the Second Amendment. Courts have also split on the traditions that justify § 922(g)(1), and they vary as to whether the statute is vulnerable to as-applied challenges.

The Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits “have upheld the categorical application of § 922(g)(1) to all felons.” *United States v. Duarte*, 137 F.4th 743, 747–48 (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)); *Zherka v. Bondi*, 140 F.4th 68, 75, 78–79 (2d Cir. 2025). 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; *Zherka*, 140 F.4th at 75 (relying on pre-*Bruen* precedent that cited *Heller*’s presumptively lawful language to conclude that the statute is facially constitutional).

The Second, 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 “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 The Second Circuit later joined the ranks on this side of the split. *Zherka*, 140 F.4th at 78–79.

Contrary to its sister circuits, the Sixth Circuit has 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. Williams*, 113 F.4th 637, 661–62 (6th Cir. 2024)). “[T]he Third Circuit [also] 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

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).

F.4th at 748 (citing *Range v. Att’y Gen.*, 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)). And the Fifth Circuit has reversed § 922(g)(1) convictions on multiple as-applied grounds. See *United States v. Hembree*, 165 F.4th 909, 910 (5th Cir. 2026); *United States v. Cockerham*, 162 F.4th 500 (5th Cir. 2025); *United States v. Mitchell*, 160 F.4th 169, 173 (5th Cir. 2025); *United States v. Doucet*, No. 24-30656, 2025 WL 3515404 (5th Cir. Dec. 8, 2025). See also *United States v. Diaz*, 116 F.4th 458, 469–70 & n.4 (5th Cir. 2024) (first opening the door to as-applied constitutional challenges post-*Bruen*).

The Third, Fifth, and Sixth Circuits agree *Heller*’s “presumptively lawful” dicta could not “supplant the most recent analysis set forth by the Supreme Court in *Rahimi*....” *Diaz*, 116 F.4th at 466. See also *Range*, 124 F.4th at 224–25; *Williams*, 113 F.4th at 646. But on the history, the Fifth Circuit alone endorsed capital punishment at the founding as the dispositive historical analogue, see *Diaz*, 116 F.4th at 467–70; the Third Circuit, for its part, 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). Instead, the linchpin for the Third Circuit’s constitutional holding relied on the lack of evidence that the claimant “poses a physical danger to others.” *Range*, 124 F.4th at 232.

The Sixth Circuit adopted a mixed approach: It 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 in part with this analysis. *United States v. Schnur*, 132 F.4th 863, 870 (5th Cir. 2025) (citing *Williams*, 113 F.4th at 661–62). But the circuits departed on the scope of the inquiry. *Compare United States v. Kimble*, 142 F.4th 308, 318 (5th Cir. 2025), *with Williams*, 113 F.4th at 659–60. The Third Circuit aligns with the Sixth Circuit on this point. *Pitsilides v. Barr*, 128 F.4th 203, 211–12 (3d Cir. 2025).

IV. 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.” 431 U.S. at 564 (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 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). Until recently, the Fifth Circuit has appeared committed to “continue to enforce § 922(g)(1)” unquestioningly because it considered itself “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).

Thus, 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”).

CONCLUSION

Petitioner Kelsey Dwayne Hunter respectfully submits that at minimum, this Court should grant *certiorari*, vacate the judgment of the United States Court of Appeals for the Fifth Circuit, and remand for reconsideration after the en banc Fifth Circuit decides *Squire*.

Respectfully submitted this 21st day of September, 2026.

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United States Court of Appeals for the Fifth Circuit

No. 25-10732
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 23, 2026

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

KELSEY DWAYNE HUNTER,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CR-259-1

Before RICHMAN, SOUTHWICK, and WILLETT, *Circuit Judges*.

PER CURIAM:*

Kelsey Dwayne Hunter pled guilty to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1).

For the first time on appeal, he argues that the district court plainly erred by applying a base offense level of 20, pursuant to U.S.S.G. § 2K2.1(a)(4)(B), because the Government did not provide proof of

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

No. 25-10732

compatibility between the semiautomatic firearm and the large capacity magazine found in his possession.

The assessment of the enhanced base offense level constituted clear or obvious error. *See United States v. Luna-Gonzalez*, 34 F.4th 479, 480–81 (5th Cir. 2022). Nonetheless, Hunter has not met his burden of establishing that the error affected his substantial rights, considering (1) the district court’s statements establishing that it believed the sentence imposed was appropriate regardless of the Sentencing Guidelines calculation; and (2) the court’s explanation for the sentence under 18 U.S.C. § 3553(a). *See United States v. Hott*, 866 F.3d 618, 621 (5th Cir. 2017).

Hunter additionally contends that the court misadvised him on the interstate commerce element of Section 922(g)(1) and that the statute violates the Commerce Clause and the Second Amendment. As he correctly concedes, however, each of those arguments is foreclosed. *See United States v. Rawls*, 85 F.3d 240, 242–43 (5th Cir. 1996); *United States v. Alcantar*, 733 F.3d 143, 145–46 (5th Cir. 2013); *United States v. Diaz*, 116 F.4th 458, 471–72 (5th Cir. 2024), *cert. denied*, 145 S. Ct. 2822 (2025); *United States v. Hernandez*, 159 F.4th 425, 429 (5th Cir. 2025).

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

KELSEY DWAYNE HUNTER

§
§
§
§
§
§
§**JUDGMENT IN A CRIMINAL CASE**

Case Number: 3:23-CR-00259-S(01)

USM Number: 69746-510

Marti Rachel Morgan

Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before the U.S. Magistrate Judge, which was accepted by the Court	Count 1 of the Indictment, filed June 21, 2023.
☐	pleaded nolo contendere to count(s) which was accepted by the Court	
☐	was found guilty on count(s) after a plea of not guilty	

The Defendant is adjudicated guilty of:

Title & Section / Nature of Offense

18 U.S.C. §§ 922(g)(1) and 924(a)(8) Possession of a Firearm by a Convicted Felon

Offense Ended

04/11/2023

Count

1

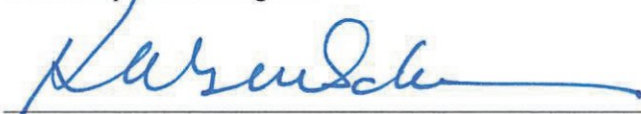
The Defendant is sentenced as provided in this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The Defendant has been found not guilty on count(s)
- ☐ The [charging instrument], filed [date], is dismissed on the motion of the United States.

It is ordered that the Defendant must notify the United States Attorney for this District within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the Defendant must notify the Court and United States Attorney of material changes in economic circumstances.

June 12, 2025

Date of Imposition of Judgment



Signature of Judge

KAREN GREN SCHOLER**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

June 13, 2025

Date of Signature

DEFENDANT: KELSEY DWAYNE HUNTER
CASE NUMBER: 3:23-CR-00259-S(01)

IMPRISONMENT

The Defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **57 months** as to Count 1.

This sentence shall run concurrently with any future sentence which may be imposed in Case No. F-2300292, pending in the 363rd Judicial District Court of Dallas County, which is related to the instant federal offense.

In addition, this case shall run consecutively to Case No. MA2345483, pending in the Dallas County Criminal Court of Appeals 2 in Dallas, Texas, which is unrelated to the instant federal offense.

- ☐ The Court makes the following recommendations to the Bureau of Prisons:
- ☒ The Defendant is remanded to the custody of the United States Marshal.
- ☐ The Defendant shall surrender to the United States Marshal:
- ☐ at ☐ a.m. ☐ p.m. on
- ☐ as notified by the United States Marshal.
- ☐ The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before #.## p.m./a.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

The Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: KELSEY DWAYNE HUNTER
CASE NUMBER: 3:23-CR-00259-S(01)

SUPERVISED RELEASE

Upon release from imprisonment, the Defendant shall be on supervised release for a term of **three (3) years**.

MANDATORY CONDITIONS

You must comply with the standard conditions that have been adopted by this Court as well as with any additional conditions on the attached page.

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.
 - ☐ The above drug testing condition is suspended, based on the Court's determination that you pose a low risk of future substance abuse (*Check if applicable*).
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution (*Check if applicable*).
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer (*Check if applicable*).
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense (*Check if applicable*).
7. ☐ You must participate in an approved program for domestic violence (*Check if applicable*).
8. ☒ You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. ☐ If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.

DEFENDANT: KELSEY DWAYNE HUNTER
CASE NUMBER: 3:23-CR-00259-S(01)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed of, report to the Court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the Court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full-time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the Court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the Court and has provided me with a written copy of this Judgment containing these conditions. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: KELSEY DWAYNE HUNTER
CASE NUMBER: 3:23-CR-00259-S(01)

SPECIAL CONDITIONS OF SUPERVISION

The Defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least \$15 per month.

The Defendant shall participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise the Defendant's 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 of the program.

The Defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The Defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$15 per month.

DEFENDANT: KELSEY DWAYNE HUNTER
 CASE NUMBER: 3:23-CR-00259-S(01)

CRIMINAL MONETARY PENALTIES

The Defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

- ☐ The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☐ The Defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the Defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The Defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The Court determined that the Defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|--|--|--|
| ☒ the interest requirement is waived for the | ☒ fine | ☒ restitution |
| ☐ the interest requirement for the | ☐ fine | ☐ restitution is modified as follows: |

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

DEFENDANT: KELSEY DWAYNE HUNTER
CASE NUMBER: 3:23-CR-00259-S(01)

SCHEDULE OF PAYMENTS

Having assessed the Defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, ☐ E, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this Judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment.
The Court will set the payment plan based on an assessment of the Defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk of the Court.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
See above for defendant and co-defendant names and case numbers (including the Defendant's number), total amount, joint and several amount, and corresponding payee, if appropriate.
- ☐ The Defendant shall pay the cost of prosecution.
- ☐ The Defendant shall pay the following court cost(s):
- ☐ The Defendant shall forfeit the Defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.