

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

IN THE SUPREME COURT OF THE UNITED STATES

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JOHN MICHAEL CARRASCO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

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JASON HAWKINS  
Federal Public Defender  
Northern District of Texas  
TX State Bar No. 00759763  
525 Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
(214) 767-2886 Fax

/s/ Kevin Joel Page  
KEVIN J. PAGE \*\*  
Assistant Federal Public Defender  
Northern District of Texas  
TX State Bar No. 24042691  
525 Griffin Street, Suite 629  
Dallas, TX 75202  
(214) 767-2746  
(214) 767-2886

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*United States v. Carrasco*, No. 23-10578,  
2024 WL 616864 (5th Cir. Feb. 14, 2024)(unpublished).
- Appendix B Judgment and Sentence of the United States District Court  
for the Northern District of Texas, entered May 26, 2023.  
*United States v. Carrasco*, Dist. Court 5:22-CR-064-H.
- Appendix C Factual Resume, entered December 8, 2022.  
*United States v. Carrasco*, Dist. Court 5:22-CR-064-H.

## APPENDIX A

# United States Court of Appeals for the Fifth Circuit

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No. 23-10578  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 14, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

JOHN MICHAEL CARRASCO,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 5:22-CR-64-1

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Before WILLETT, DUNCAN, and RAMIREZ, *Circuit Judges.*

PER CURIAM:\*

John Michael Carrasco pleaded guilty, pursuant to a written plea agreement, to possession of a firearm after felony conviction, in violation of 18 U.S.C. § 922(g)(1). On appeal, he raises multiple claims challenging his conviction.

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

No. 23-10578

As an initial matter, Carrasco argues that the appellate waiver provision of his plea agreement should not bar consideration of his appellate claims, while the Government argues that the waiver covers his constitutional claims and should be enforced. Because the appeal waiver does not implicate our jurisdiction and Carrasco's substantive issues are easily resolved, we pretermite the waiver issue. *See United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022).

Because Carrasco did not raise these arguments in the district court, our review is for plain error only. *See United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014); *United States v. Alvarado-Casas*, 715 F.3d 945, 951 (5th Cir. 2013). To prevail on plain error review, Carrasco must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes this showing, we have the discretion to correct the error but should do so only if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks, citation, and alteration omitted).

As for the merits of his claims, Carrasco first argues that § 922(g)(1) is unconstitutional under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022), which announced a new test for assessing whether a statute infringes the Second Amendment. Applying plain error review, we recently rejected a similar *Bruen*-based argument. *See United States v. Jones*, 88 F.4th 571, 573-74 (5th Cir. 2023). Accordingly, Carrasco's Second Amendment claim fails.

Next, Carrasco contends that his stipulation that the firearm he possessed previously traveled in interstate commerce was insufficient to establish the requisite nexus between his conduct and commerce under § 922(g)(1). However, he correctly concedes that we have held that § 922(g)(1)'s "'in or affecting commerce' element can be satisfied if the

No. 23-10578

firearm possessed by a convicted felon had previously traveled in interstate commerce.” *United States v. Rawls*, 85 F.3d 240, 242-43 (5th Cir. 1996) (quote at 242) (citing *Scarborough v. United States*, 431 U.S. 563, 575 (1977)); see *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020). In the alternative, Carrasco argues that if the prevailing interpretation of § 922(g)(1) is correct, then the statute exceeds Congress’s authority under the Commerce Clause. However, as Carrasco also acknowledges, we have upheld the constitutionality of § 922(g)(1), even after the Supreme Court’s opinion in *United States v. Lopez*, 514 U.S. 549 (1995). See, e.g., *Jones*, 88 F.4th at 573; *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013); *Rawls*, 85 F.3d at 242-43. Under the rule of orderliness, we are compelled to following our existing precedent unless the Supreme Court “unequivocally” overrules it. See *Jones*, 88 F.4th at 573 (internal quotation marks and citation omitted). Accordingly, Carrasco’s factual basis and Commerce Clause arguments lack merit.

AFFIRMED.

## APPENDIX B

**UNITED STATES DISTRICT COURT**  
NORTHERN DISTRICT OF TEXAS LUBBOCK DIVISION

UNITED STATES OF AMERICA

v.

**JOHN MICHAEL CARRASCO**

§ **AMENDED JUDGMENT/CRIMINAL CASE**  
 §  
 §  
 § Case Number: **5:22-CR-00064-H-BQ(1)**  
 § USM Number: **17369-510**  
 § **Sarah Gunter**  
 § Defendant's Attorney

DATE OF ORIGINAL JUDGMENT: May 18, 2023.

REASON FOR AMENDMENT: **Updated BOP recommendation.**

**THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	
<input checked="" type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	<b>1 of the Superseding Information filed December 8, 2022.</b>
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1), 924(a)(2) - CONVICTED FELON IN POSSESSION OF A FIREARM	04/03/2022	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Remaining count(s) are 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.

**May 18, 2023**

Date of Imposition of Judgment

Signature of Judge

**James Wesley Hendrix**  
**United States District Judge**

Name and Title of Judge

**May 26, 2023**

Date



DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

60 months as to count 1. This sentence shall run concurrently with any sentence imposed in Case Nos. PFF2022MAG1204 and PFF2022MAG1205, both pending in the Lubbock County Magistrate Court.

The court makes the following recommendations to the Bureau of Prisons: **Incarceration at USP Florence, Colorado.**

The Court recommends that, while incarcerated, the defendant receive appropriate substance-abuse treatment, but the Court did not lengthen the defendant's prison term to promote rehabilitation. *See Tapia v. United States*, 564 U.S. 319 (2011).

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

The defendant shall surrender to the United States Marshal for this district:

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 2 p.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:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

### SUPERVISED RELEASE

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

### MANDATORY CONDITIONS

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)*

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.

DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

### 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, 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](http://www.txnp.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

1. 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 \$20.00 per month.

DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

**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>
<b>TOTALS</b>	\$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 nonfederal 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

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

### 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  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, 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 20 (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, U.S. District 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 defendant 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.

DEFENDANT: JOHN MICHAEL CARRASCO  
CASE NUMBER: 5:22-CR-00064-H-BQ(1)

**FORFEITED PROPERTY**

Pursuant to 18 U.S.C. § 2253(a) and Fed. R. Crim. P. 32.2(b)(4)(B), and the Preliminary Order of Forfeiture (Dkt. #32) filed on 02/21/23, it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: Taurus, Model G3C, 9 millimeter caliber semi-automatic handgun, serial number ACH099846; and any ammunition, magazines, and/or accessories recovered with the firearms.


## APPENDIX C



CLERK U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
LUBBOCK DIVISION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

2022 DEC -8 PM 2: 18

DEPUTY CLERK 

UNITED STATES OF AMERICA

v.

NO. 5:22-CR-064-H

JOHN MICHAEL CARRASCO

**FACTUAL RESUME**

In support of John Michael Carrasco's plea of guilty to the offense in Count One of the Superseding Information, Carrasco, the defendant, Sarah Gunter, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

**ELEMENTS OF THE OFFENSE**

To prove the offense alleged in Count One of the Superseding Information, charging a violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), that is, Convicted Felon in Possession of a Firearm, the government must prove each of the following elements beyond a reasonable doubt:<sup>1</sup>

- First.* That the defendant knowingly possessed a firearm as charged;
- Second.* That before the defendant possessed the firearm, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year;
- Third.* That the defendant knew he had been convicted in a court of a crime punishable by a term of imprisonment in excess of one year; and

<sup>1</sup> Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019).

*Fourth.* That the firearm possessed traveled in interstate commerce; that is, before the defendant possessed the firearm, it had traveled at some time from one state to another or between any part of the United States and any other country.

### **STIPULATED FACTS**

1. John Michael Carrasco admits and agrees that on or about April 3, 2022, in the Lubbock Division of the Northern District of Texas, and elsewhere, knowing he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year, he did knowingly possess, in or affecting interstate or foreign commerce, a firearm, to wit: a Taurus, Model G3C, 9 millimeter caliber semi-automatic handgun, serial number ACH099846, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

2. On April 3, 2022, the Lubbock Police Department (LPD) received a 911 call from a man named D.C., who told the operator that he had been shot in the leg by his son, John Michael Carrasco. During the call, D.C. said the shooting was an accident. First responders were dispatched to D.C.'s home located at 3415 33rd Street, Lubbock, Texas. While medical crews attended to D.C., LPD officers encountered John Michael Carrasco standing in the driveway. Carrasco said that he was handing the firearm to his father and it went off. Carrasco told officers he threw the firearm on top of the driveway carport after the incident because he is a felon and cannot be around firearms.

3. An officer used a ladder to climb on top of the carport where he located the firearm that Carrasco threw. The firearm was a Taurus, Model G3C, 9 millimeter caliber semi-automatic handgun, serial number ACH099846. When officers interviewed D.C.,

he said Carrasco located D.C.'s firearm under a mattress and that Carrasco was messing with the firearm when it went off and struck D.C. in the leg.

4. A review of Carrasco's criminal history showed an Assault of Family Member (Second Offense) felony conviction from 2013. Carrasco was sentenced to four years imprisonment for this conviction.


5. A Bureau of Alcohol, Tobacco, Firearms, and Explosives special agent confirmed that the Taurus handgun was manufactured in Brazil, and therefore traveled in or affected interstate or foreign commerce.

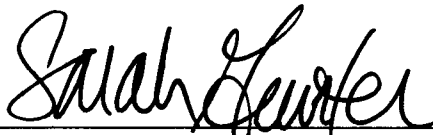
6. Carrasco admits and agrees that he committed all the essential elements of the offense alleged in Count One of the Superseding Information. Specifically, Carrasco admits that on April 3, 2022, he knowingly possessed the firearm described above while being a person having been previously convicted in a court of a crime punishable by imprisonment for a term in excess of one year. Carrasco admits that he knew he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year. Carrasco admits that the said firearm traveled in or affected interstate or foreign commerce.

7. The defendant agrees that the defendant committed all the essential elements of the offense. This factual resume is not intended to be a complete accounting of all the facts and events related to the offense charged in this case. The limited purpose of this statement of facts is to demonstrate that a factual basis exists to support the defendant's guilty plea to Count One of the Superseding Information.

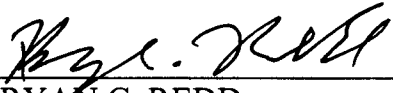
8. The defendant further admits and agrees that the above-described firearm was involved or used in the defendant's knowing commission of this offense and is therefore subject to forfeiture, pursuant to 18 U.S.C. § 924(d).

AGREED TO AND STIPULATED on this 8<sup>th</sup> day of December, 2022.

  
\_\_\_\_\_  
JOHN MICHAEL CARRASCO  
Defendant

  
\_\_\_\_\_  
SARAH GUNTER  
Attorney for Defendant

CHAD E. MEACHAM  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
RYAN C. REDD  
Assistant United States Attorney  
North Carolina State Bar No. 49481  
1205 Texas Avenue, Suite 700  
Lubbock, Texas 79401  
Tel: 806-472-7351  
Fax: 806-472-7394  
Email: ryan.redd@usdoj.gov