

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

XAVIER LAMARR JONES,

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

APPENDIX

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United States v. Jones, No. 23-10796, 2024 WL 1192216
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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 20, 2024

Lyle W. Cayce
Clerk

No. 23-10796
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

XAVIER LAMARR JONES,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:22-CR-100-1

Before WIENER, STEWART, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Xavier Lamarr Jones pleaded guilty to possessing a firearm after a felony conviction, in violation of 18 U.S.C. § 922(g)(1). On appeal, he argues for the first time that § 922(g)(1) is unconstitutional. The Government has moved for summary affirmance or, in the alternative, an extension of time in which to file a brief. Jones opposes summary affirmance and requests a stay.

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

No. 23-10796

Because Jones failed to preserve his claims, our review is for plain error only. See *United States v. Snarr*, 704 F.3d 368, 382 (5th Cir. 2013). To demonstrate plain error, a defendant must show (1) a forfeited error (2) that is clear or obvious and (3) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). Jones waived his right to appeal his conviction and sentence in most respects, but he argues that the waiver does not bar the claims he has raised. Because those claims are easily resolved on the merits, we decline to reach this issue. See *United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022).

Jones argues that under the prevailing interpretation of the “in or affecting commerce” element of § 922(g)(1), the statute is unconstitutional because it exceeds Congress’s authority to regulate commerce. As he concedes, this argument is foreclosed. See *United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020).

Relying on *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), Jones also contends that § 922(g)(1) violates the Second Amendment. This court rejected another unpreserved *Bruen* challenge to § 922(g)(1) in *United States v. Jones (Derrick Durrell Jones)*, 88 F.4th 571 (5th Cir. 2023), *petition for cert. filed* (U.S. Feb. 13, 2024), because any error was not clear or obvious. As the Government argues, that case is dispositive here.

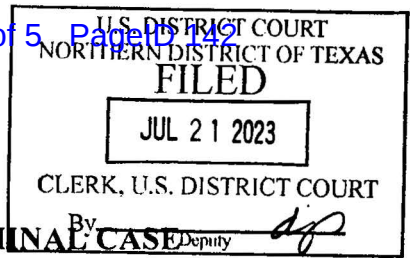
Jones posits that future decisions may undermine or abrogate *Derrick Durrell Jones*. But we are not convinced that we should depart from our usual practice, which is to apply existing precedent unless and until it is altered. See *United States v. Islas-Saucedo*, 903 F.3d 512, 521 (5th Cir. 2018). Because Jones does not concede that every issue in this appeal is foreclosed, we decline to grant summary affirmance. Because the outcome is clear, however, further briefing is unnecessary.

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Accordingly, Jones's motion for a stay is DENIED, the Government's motion for summary affirmance and alternative motion for an extension of time are DENIED, and the judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Amarillo Division



UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 2:22-CR-100-Z-BR-(1)

U.S. Marshal's No.: 24456-510

XAVIER LAMARR JONES

Meredith Elizabeth Pinkham, Assistant U.S. Attorney

Felipe Zavala, Attorney for the Defendant

On February 6, 2023 the defendant, XAVIER LAMARR JONES, entered a plea of guilty as to Count One of the Indictment filed on September 22, 2022. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	CONVICTED FELON IN POSSESSION OF FIREARMS	08/14/2022	One

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Indictment filed on September 22, 2022.

The defendant shall notify the United States Attorney for this district within thirty days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Sentence imposed July 20, 2023.

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

Signed July 21, 2023.

Judgment in a Criminal Case
Defendant: XAVIER LAMARR JONES
Case Number: 2:22-CR-100-Z-BR-(1)

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IMPRISONMENT

The defendant, XAVIER LAMARR JONES, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Seventy Two (72) months as to Count One** of the Indictment filed on September 22, 2022. The sentence shall *run concurrently* to any sentence that may be imposed in Case Nos. 1701776 and 1714752, pending in the Harris County District Court No. 192; and Case No. 2336506 pending in the Harris County Court at Law No. 16 — all of which are unrelated to the instant offense. The sentence shall *run concurrently* to any sentence that may be imposed in the following charges pending in the Potter County Sheriff's Office: Aggravated Assault with a Weapon; Unlawful Possession of a Firearm by a Felon; and Giving False Information — all of which are related to the instant offense.

The Court makes the following recommendations to the Bureau of Prisons:

1. that the Defendant be allowed to participate in a full medical evaluation to identify possible treatments for gastrointestinal and orthopedic issues reflected in the PSR; be allowed to participate in a full mental health evaluation to identify possible counseling; and be allowed to participate in any and all substance abuse treatment and rehabilitation programs, including the Residential Drug Abuse Program, while in the custody of the Federal Bureau of Prisons, if eligible, if consistent with security classification;
2. that the Defendant be allowed to participate in any and all vocational training, if possible, CDL, electrical and welding, if eligible, if consistent with security classification; and
3. that the Defendant be allowed to serve his term of incarceration in the southeast region, if possible, FCI Pensacola, if eligible, if consistent with security classification.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **Three (3) years** as to Count One of the Indictment filed on September 22, 2022.

While on supervised release, in compliance with the Standard Conditions of supervision adopted by the United States Sentencing Commission at Section 5D1.3(c), the defendant shall:

1. The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
3. The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.

Judgment in a Criminal Case
Defendant: XAVIER LAMARR JONES
Case Number: 2:22-CR-100-Z-BR-(1)

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4. The defendant shall answer truthfully the questions asked by the probation officer.
5. The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
7. The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or the job responsibilities), the defendant shall notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
10. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (*i.e.*, anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. The defendant shall not act or make 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
13. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

Also, as set forth in the Notice of Intent to Impose Conditions of Supervised Release signed and dated July 20, 2023, the Defendant shall comply with the below-listed other conditions of supervised release, which are derived from Sections 5D1.3(a), (b), (d), and (e), in relevant part:

1. The defendant shall not commit another federal, state or local offense (*see* 18 U.S.C. § 3583(d)).

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2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).
3. The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. § 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant (*see* 18 U.S.C. § 3583(d)).
4. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable information indicates a low risk of future substance abuse by the defendant (*see* 18 U.S.C. § 3583(d)).
5. If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine (*see* 18 U.S.C. § 3624(e)).
6. The defendant shall (A) make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A, or any other statute authorizing a sentence of restitution; and (B) pay the assessment imposed in accordance with 18 U.S.C. § 3013. If there is a court-established payment schedule for making restitution or paying the assessment (*see* 18 U.S.C. § 3572(d)), the defendant shall adhere to the schedule.
7. If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act (*see* 18 U.S.C. § 3583(d)).
8. The defendant shall submit to the collection of a DNA sample from the defendant at the direction of the United States Probation Office if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (34 U.S.C. § 40702).
9. 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, contributing to the costs of services rendered (copayment) at the rate of at least \$20 per month.
10. 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 \$20 per month.
11. The defendant shall participate in a domestic violence treatment program (i.e. batterer's intervention program and anger management program) as directed by the probation officer until successfully discharged. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$20 per month.

Judgment in a Criminal Case
Defendant: XAVIER LAMARR JONES
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FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

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

United States Marshal

BY _____
Deputy Marshal

APPENDIX C

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

UNITED STATES OF AMERICA

v.

NO. 2:22-CR-100-Z

XAVIER LAMARR JONES

FACTUAL RESUME

In support of Xavier Lamarr Jones's plea of guilty to the offense in Count One of the indictment, Jones, the defendant, Felipe Zavala, 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 indictment, charging a violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8), that is, Convicted Felon in Possession of Firearms, the government must prove each of the following elements beyond a reasonable doubt:¹

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

¹ Fifth Circuit Pattern Jury Instruction 2.43D (5th Cir. 2019 ed.).

Fourth. That the firearms possessed traveled in interstate or foreign commerce; that is, before the defendant possessed the firearms, they 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. Xavier Lamarr Jones admits and agrees that on or about August 14, 2022, in the Amarillo Division of the Northern District of Texas, and elsewhere, knowing he was a person who 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, firearms, that are: 1) a Smith & Wesson, Model M&P, .40 caliber semi-automatic pistol, bearing serial number NKF5899; and 2) an Anderson Manufacturing, Model AM-15, semi-automatic rifle, bearing serial number 21184406, in violation of Title 18, United States Code Sections 922(g)(1) and 924(a)(8).

2. On August 14, 2022, Amarillo Police Department (APD) officers were dispatched to the Axiom Apartments, located at 1550 S. Bell in Amarillo, Texas, to investigate a domestic argument and a report of gunshots. Officers contacted Xavier Lamarr Jones inside the apartment identified by witnesses as the source of the fight and gunshots. Officers also located a woman who had a visible injury to her face inside the apartment. Jones was arrested for an outstanding warrant. Officers then searched the apartment pursuant to a search warrant and located a Smith & Wesson, Model M&P, .40 caliber semi-automatic pistol, bearing serial number NKF5899 in the bathroom of the apartment.

3. An officer read Jones his *Miranda* warnings and he agreed to be interviewed. Jones told the officers that there was another firearm in a closet inside the apartment. Based on this information, the officers located an Anderson Manufacturing, Model AM-15, semi-automatic rifle, bearing serial number 21184406 inside of the closet where Jones told the officers it would be.

4. Court records confirmed that before August 14, 2022, Jones had been convicted of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense. Further, before Jones possessed the firearms, he knew he had been convicted of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense.

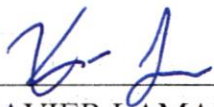
5. A task force officer with the Bureau of Alcohol, Tobacco, Firearms, and Explosives was able to determine that the firearms described above was manufactured outside of the state of Texas. Accordingly, the firearms affected interstate or foreign commerce because the firearms must have traveled at some time from one state to another or between any part of the United States and any other country.

6. The defendant agrees that the defendant committed all the essential elements of the offense. Specifically, the defendant agrees that he possessed the firearms 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, that the defendant knew he had been previously convicted of a crime punishable by a term of imprisonment exceeding one year, and that the said firearms traveled in interstate or foreign commerce. 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 indictment.

AGREED TO AND STIPULATED on this 23rd day of January, 2023.


LEIGHA SIMONTON
UNITED STATES ATTORNEY



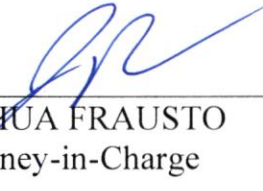
XAVIER LAMARR JONES
Defendant



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