

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

IN THE SUPREME COURT OF THE UNITED STATES

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DAVID THOMAS OVERMAN,

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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/s/ Adam Nicholson

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Appendix A Opinion of Fifth Circuit, CA No. 23-10369, *United States v. Overman*, 2024 WL 637475 (5th Cir. Feb. 15, 2024) (unpublished).

Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, entered June 9, 2023.  
*United States v. Overman*, Dist. Court 2:22-CR-090-Z-BR..

## APPENDIX A

United States Court of Appeals  
for the Fifth Circuit

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No. 23-10639  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

February 15, 2024

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

DAVID THOMAS OVERMAN,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 2:22-CR-90-1

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

PER CURIAM:\*

David Thomas Overman appeals his guilty plea conviction for being a felon in possession of a firearm. Overman contends that the district court erred by accepting his guilty plea because 18 U.S.C. § 922(g) requires more than the mere prior movement of a firearm in interstate commerce to satisfy the statute's jurisdictional nexus; exceeds Congress's Commerce Clause

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

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power; and was rendered unconstitutional by the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). He further argues that the district court plainly erred by failing to inform him, under Federal Rule of Criminal Procedure 11(b)(1)(G), of § 922(g)'s unconstitutionality.

Because Overman did not object to the district court's acceptance of his guilty plea, let alone on any of the bases he pleads on appeal, review is for plain error. *See Puckett v. United States*, 556 U.S. 129, 134 (2009); *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013). To show plain error, Overman must, relevantly, identify (1) a forfeited error (2) that is clear or obvious, rather than subject to reasonable dispute, and (3) that affects his substantial rights. *See Puckett*, 556 U.S. at 135.

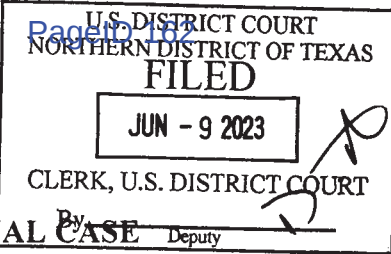
Overman fails to make the requisite showing. He cites no binding authority for his arguments that satisfying § 922(g)'s interstate-commerce nexus requires more than a simple admission that the firearm in question travelled in interstate commerce—a fact he admitted in pleading guilty—or that § 922(g) exceeds Congress's authority under the Commerce Clause. A “lack of binding authority is often dispositive in the plain-error context.” *United States v. Gonzalez*, 792 F.3d 534, 538 (5th Cir. 2015). To the contrary, both this court and the Supreme Court have rejected such arguments. *See Scarborough v. United States*, 431 U.S. 563, 575 (1977); *United States v. Alcantar*, 733 F.3d 143, 145-46 (5th Cir. 2013). Overman similarly cites no authority from this court or the Supreme Court holding § 922(g) to be unconstitutional, either facially or as applied, in light of *Bruen*. *See Gonzalez*, 792 F.3d at 538. Thus, whether the district court erred in light of *Bruen* is, at best, subject to reasonable dispute. “By definition, that is not plain error.” *United States v. Broussard*, 669 F.3d 537, 550 (5th Cir. 2012). We recently applied this standard directly to § 922(g) holding that applying this statute is not plain error. *See United States v. Jones*, 88 F.4th 571, 574 (5th Cir. 2023).

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Lastly, Overman cites no authority requiring a district court, under Rule 11(b)(1)(G), to advise a defendant of the actual or potential unconstitutionality of the statute to which he is pleading. *See Gonzalez*, 792 F.3d at 538. Rule 11(b)(1)(G)'s requirement that defendants understand the "nature of the charge" against them "refers to the elements of the offense." *United States v. Lujano-Perez*, 274 F.3d 219, 224 (5th Cir. 2001). In pleading guilty, Overman confirmed that he understood the elements of a § 922(g) offense. He thus fails to show error, let alone clear or obvious error.

We AFFIRM the judgment.

## 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-090-Z-BR-(1)

U.S. Marshal's No.: 15726-510

DAVID THOMAS OVERMAN

Meredith Elizabeth Pinkham, Assistant U.S. Attorney

Eric Coats, Attorney for the Defendant

On December 27, 2022 the defendant, DAVID THOMAS OVERMAN, entered a plea of guilty as to Count One of the Superseding Information filed on December 12, 2022. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title &amp; 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	07/22/2022	One

The defendant is sentenced as provided in pages 2 through 4 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 Superseding Information filed on December 12, 2022.

Upon Motion of the government, all remaining Counts are dismissed, as to this defendant only.

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 June 8, 2023.

MATTHEW J. KACSMARYK  
UNITED STATES DISTRICT JUDGE

Signed June 9, 2023.



Judgment in a Criminal Case  
Defendant: DAVID THOMAS OVERMAN  
Case Number: 2:22-CR-090-Z-BR(1)

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### IMPRISONMENT

The defendant, DAVID THOMAS OVERMAN, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **Twenty Seven (27) months as to Count One** of the Superseding Information filed on December 12, 2022. The sentence shall **run concurrently** to any sentence that may be imposed in the following cases: (1) Case #CF-2015-376 pending in the District Court, Washington County, Oklahoma; (2) Case #082082-E-CR, pending in the 108th District Court, Potter County, Texas; and (3) Case #078390-A-CR, pending in the 47th District Court, Potter County, Texas, all for charges that are unrelated 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 treatment protocols for the neurofibroma and dental issues reflected in the PSR; 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 educational courses to obtain GED, if possible, if eligible, if consistent with security classification.
3. that the Defendant be allowed to serve his term of incarceration at a facility nearest Amarillo, Texas, if possible, 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 **Two (2) years** as to Count One of the Superseding Information filed on December 12, 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.
4. The defendant shall answer truthfully the questions asked by the probation officer.

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Defendant: DAVID THOMAS OVERMAN

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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 June 9, 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)).
2. The defendant shall not unlawfully possess a controlled substance (*see* 18 U.S.C. § 3583(d)).

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Defendant: DAVID THOMAS OVERMAN

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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 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.
10. 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 per month.

#### **FINE/RESTITUTION**

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

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

Judgment in a Criminal Case  
Defendant: DAVID THOMAS OVERMAN  
Case Number: 2:22-CR-090-Z-BR(1)

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**FORFEITURE**

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), and subject to the provisions of 21 U.S.C. § 853(n), it is hereby ordered that Defendant's interest in the following property is **condemned and forfeited** to the United States: **A Smith & Wesson, Model CTG, .38 caliber revolver, bearing serial number 166777; A Taurus, Model G2C, 9 millimeter semi-automatic pistol, bearing serial number ACL532398; and Any ammunition recovered with the firearms.**

**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