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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 8, 2024

Lyle W. Cayce
Clerk

No. 22-40714

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MANUEL MOYA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:22-CR-290-1

Before KING, HO, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Manuel Moya pleaded guilty pursuant to a plea agreement to possession with intent to distribute more than five kilograms of cocaine, as well as possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). He argues for the first time on appeal that § 922(g)(1) is unconstitutional in light of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). The Government argues that the appeal waiver

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

No. 22-40714

in Moya's plea agreement bars consideration of his claim. However, as the appeal waiver does not implicate our jurisdiction, and Moya's constitutional argument is easily resolved, we pretermitt the waiver issue. *See United States v. Thompson*, 54 F.4th 849, 851 (5th Cir. 2022); *United States v. Story*, 439 F.3d 226, 230–31 (5th Cir. 2006).

Because Moya did not raise this argument before the district court, we review for plain error. *See Puckett v. United States*, 556 U.S. 129, 134 (2009). Moya's plain-error challenge to the constitutionality of § 922(g)(1) is foreclosed by our decision in *United States v. Jones*, 88 F.4th 571, 573–74 (5th Cir. 2023). In *Jones*, we noted that we have “not yet addressed the impact of *Bruen* on the constitutionality of § 922(g)(1) in a case in which the issue was preserved in the district court.” *Id.* at 573. “Given the absence of binding precedent holding that § 922(g)(1) is unconstitutional, and that it is unclear that *Bruen* dictates such a result,” we held in *Jones* that the defendant's plain-error challenge to § 922(g)(1)'s constitutionality based on *Bruen* failed. *Id.* at 574.

This court has continued to apply *Jones*'s precedent following the Supreme Court's decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024). *See United States v. Wilson*, No. 23-50509, 2024 WL 3610416, at *2 (5th Cir. Aug. 1, 2024); *United States v. Hildreth*, No. 22-20301, 2024 WL 3491773, at *5 (5th Cir. July 22, 2024); *United States v. Chavez*, No. 24-10064, 2024 WL 3201731, at *1 (5th Cir. June 27, 2024). We see no reason to stray from *Jones* here, since there is still an absence of binding precedent holding that § 922(g)(1) is unconstitutional, and it remains unclear whether *Bruen*—even with *Rahimi*'s clarification—dictates such a result. Accordingly, we find that Moya's plain-error challenge fails.

AFFIRMED.

APPENDIX B

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 8, 2024

Lyle W. Cayce
Clerk

No. 22-40714

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MANUEL MOYA,

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:22-CR-290-1

Before KING, HO, and ENGELHARDT, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

for stay of mandate, whichever is later. See Fed. R. App. P. 41(b). The court may shorten or extend the time by order. See 5th Cir. R. 41 I.O.P.

APPENDIX C

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS Holding Session in Corpus Christi

ENTERED October 18, 2022 Nathan Ochsner, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

MANUEL MOYA

CASE NUMBER: 2:22CR00290-001

USM NUMBER: 97512-509

Scott M. Ellison

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 1 and 3 on July 27, 2022.
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 these offenses:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Rows include 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 6 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)
Count(s) remaining 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.

October 17, 2022

Date of Imposition of Judgment

Signature of Judge

DAVID S. MORALES UNITED STATES DISTRICT JUDGE

Name and Title of Judge

October 18, 2022

Date

DEFENDANT: MANUEL MOYA
CASE NUMBER: 2:22CR00290-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 300 months.

The sentence imposed consists of 240 months as to Count One, followed by a consecutive term of sixty (60) months as to Count Three, for a total of 300 months.

See Additional Imprisonment Terms.

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

That the defendant be placed in a facility near South Texas, as long as the security needs of the Bureau of Prisons are met.

The defendant participates in the Residential Drug Abuse Program (RDAP) program.

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 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:

Three horizontal lines for signature or notes.

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

UNITED STATES MARSHAL

By

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **MANUEL MOYA**
CASE NUMBER: **2:22CR00290-001**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 5 years. This term consists of five (5) years as to Count One and three (3) years as to Count Three, to run concurrently, for a total of five (5) 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 the location where 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 other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- See Special 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.
14. If restitution is ordered, the defendant must make restitution as ordered by the Judge and in accordance with the applicable provisions of 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663A and/or 3664. The defendant must also pay the assessment imposed in accordance with 18 U.S.C. § 3013.
15. The defendant must notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: MANUEL MOYA
CASE NUMBER: 2:22CR00290-001

SPECIAL CONDITIONS OF SUPERVISION

SUBSTANCE ABUSE TREATMENT, TESTING, AND ABSTINENCE: You must participate in an outpatient substance-abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the costs of the program, if financially able.

You may not possess any controlled substances without a valid prescription. If you do have a valid prescription, you must follow the instructions on the prescription.

You must submit to substance-abuse testing to determine if you have used a prohibited substance, and you must pay the costs of the testing if financially able. You may not attempt to obstruct or tamper with the testing methods.

You may not use or possess alcohol.

You may not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances, including synthetic marijuana or bath salts, that impair a person's physical or mental functioning, whether or not intended for human consumption, except as with the prior approval of the probation officer.

DEFENDANT: **MANUEL MOYA**
 CASE NUMBER: **2:22CR00290-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment¹</u>	<u>JVTA Assessment²</u>
TOTALS	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00

A \$100 special assessment is ordered as to each of Counts 1 and 3, for a total of \$200.

- See Additional Terms for Criminal Monetary Penalties.
- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss³</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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- See Additional Restitution Payees.

TOTALS

- 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 Sheet 6 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:
- Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
³ 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: MANUEL MOYA
CASE NUMBER: 2:22CR00290-001

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 payment of \$ due immediately, balance due
B Payment to begin immediately (may be combined with C, D, or F below); or
C Payment in equal installments of \$ over a period of , to commence after the date of this judgment; or
D Payment in equal installments of \$ over a period of , to commence after release from imprisonment to a term of supervision; or
E Payment during the term of supervised release will commence within 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:

Payable to: Clerk, U.S. District Court
Attn: Finance
1133 N. Shoreline Blvd., Ste. 208
Corpus Christi, TX 78401

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

Case Number

Defendant and Co-Defendant Names (including defendant number) Total Amount Joint and Several Amount Corresponding Payee, if appropriate

- See Additional Defendants and Co-Defendants Held Joint and Several.
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.

APPENDIX D

ENTERED

July 27, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA

§

§

versus

§

Criminal Case 2:22-cr-00290

§

Manuel Moya

§

**FINDINGS AND RECOMMENDATION
ON PLEA OF GUILTY**

This case has been referred to the undersigned United States Magistrate Judge for the purpose of conducting a felony guilty plea proceeding pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The undersigned submits these Findings and Recommendation to the District Judge pursuant to 28 U.S.C. § 636(b)(3). All parties have waived the right to plead before a United States District Judge, and additionally, have consented to proceed before the undersigned.

The defendant and counsel appeared before the undersigned who addressed the defendant personally in open court and informed the defendant of, and determined that the defendant understood, the admonishments under Rule 11 of the Federal Rules of Criminal Procedure.

After being placed under oath and admonished in accordance with Rule 11, the defendant pleaded guilty to Count (s) 1, 3 of the Indictment. The undersigned Magistrate Judge finds the defendant understands the following rights, procedures, facts and obligations as required by Rule 11:

1. The government's right, in a prosecution for perjury or false statement, to use against the defendant any statement the defendant gives under oath;
2. The right to plead not guilty, or having already so pleaded, to persist in that plea;
3. The right to a jury trial;
4. The right to be represented by counsel, and if necessary, to have counsel appointed and present at every stage of the proceedings including trial;

5. The right at trial to confront and cross examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel attendance of witnesses;
6. These trial rights will be waived if the Court accepts the plea of guilty;
7. The nature of each charge to which the defendant is pleading guilty;
8. The maximum possible penalties, including imprisonment, fine, and term of supervised release;
9. Any applicable mandatory minimum penalty;
10. Any applicable forfeiture;
11. The Court's authority to order restitution;
12. The Court's obligation to impose a special assessment;
13. In determining a sentence, the Court's obligation to calculate the applicable sentencing guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a);
14. The terms of the plea agreement, if applicable, including any provisions waiving the right to appeal or to collaterally attack the sentence; and
15. That if convicted a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

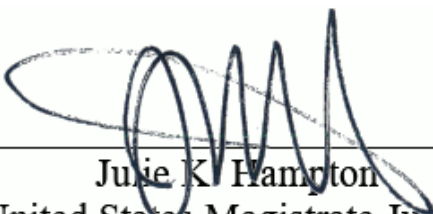
The undersigned Magistrate Judge further finds:

1. The defendant is mentally competent to enter the plea of guilty;
2. The defendant entered the plea of guilty voluntarily and did not result from force, threats, or promises other than those contained in a plea agreement;
3. There is a sufficient factual basis to accept this plea of guilty.
4. The ends of justice will be served by acceptance of the defendant's plea of guilty.

RECOMMENDATION

It is respectfully recommended that the District Court adopt the foregoing findings, accept the defendant's plea of guilty, and enter a finding that the defendant is guilty.

Respectfully submitted the 27th of July 2022.



Julie K. Hampton
United States Magistrate Judge

NOTICE TO PARTIES

The Clerk will file the Findings and Recommendation on Plea of Guilty and transmit a copy to each party or counsel. Within FOURTEEN (14) DAYS after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Crim. P. 59(b), 28 U.S.C. § 636(b)(1), and General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within **FOURTEEN (14) DAYS** after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).